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ABSTRACT

This manual incorporates the Delaware State Board of Education's rules and regulations governing the education of exceptional children and is intended to provide guidance and information to educators, administrators, parents, and the public. The section on handicapped children covers the following areas: access to special education and related services; identification; evaluation (e.g., multidisciplinary team, bias-free tests and procedures, and reevaluation); Individualized Education Programs; eligibility; programs and placement (e.g., continuum of alternative program placements, informed parental consent, related services, and transportation); interagency/special programs; annual review; student management and discipline; educational surrogate parents; procedural safeguards (e.g., due process, hearing rights, and attorney's fees); confidentiality of student records; private placements; the Delaware Educational Assessment Program; State Education Agency responsibilities (e.g., complaint management procedures, cooperative agreements, and finance/administration); the Governor's Advisory Council for Exceptional Citizens; and funding. Guidelines for gifted and talented students are provided in a brief section covering eligibility, identification, program placement, and funding. (DB)

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ADMINISTRATIVE MANUAL:

PROGRAMS FOR

EXCEPTIONAL CHILDREN

STATE BOARD OF EDUCATION
DOVER, DELAWARE

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ADMINISTRATIVE MANUAL:

PROGRAMS FOR EXCEPTIONAL CHILDREN

THE DELAWARE DEPARTMENT OF PUBLIC INSTRUCTION

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FOREWORD

The Administrative Manual: Programs for Exceptional Children incorporates the State Board of Education's rules and regulations governing the education of exceptional children in Delaware. It is based upon State and federal law and State Board of Education policy. It is intended to provide guidance to educators and other persons responsible for administering educational programs, and to provide information to parents and the public.

The Manual is the culmination of numerous drafts and hundreds of comments and suggestions of many interested individuals and organizations. It is recognized that the Manual will continue to undergo revisions due to the enactment of new laws, the development of rules and regulations at the State and federal levels, decisions of the courts, and the continuing evolution of the field of education of exceptional children. Thus, the Manual should be considered an evolving document.

The State Department of Public Instruction will continue to seek additional comments and suggestions for future revisions of the Manual.

William B. Keene
State Superintendent

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ADMINISTRATIVE MANUAL:
PROGRAMS FOR EXCEPTIONAL CHILDREN

Introduction

The Delaware Department of Public Instruction, through the Exceptional Children/Special Programs Division, serves a diverse population of exceptional children. This Administrative Manual addresses the State and federal requirements for the administration and delivery of programs for handicapped persons, as identified by PL 94-142, the Education For All Handicapped Children Act. It also addresses the administration and delivery of programs for gifted and talented students.

Purpose of the Manual

This Administrative Manual is intended to provide:

1. one comprehensive source of regulatory requirements which apply to programs for handicapped students;

2. the information needs of education and other agency staff who are responsible for the administration and delivery of programs for handicapped students;

3. a means for the improvement of the quality and scope of programs for handicapped students; and

4. the basis for monitoring to determine compliance of programs for handicapped students with all applicable State and federal statutes and regulations.

The Administrative Manual has been organized to meet the information needs of education and other agency staff who are responsible for the administration and delivery of programs for exceptional students and is intended to communicate the State and federal requirements for administration and delivery of programs for handicapped students. Each education agency or other provider of special education and related services is to use the Manual in designing and implementing its programs. The Manual will serve as a basis for the Department of Public Instruction's monitoring to determine if each program for handicapped students within the State is in compliance with all applicable State and federal statutes and regulations.

Development of the Manual

The Administrative Manual was developed throughout 1986, and incorporated a user participatory process. A steering committee, review committee, and five task forces comprised of representatives of major interest groups provided guidance and expertise. Directors, supervisors, staff members of the Exceptional Children/Special Programs Division, superintendents, and individual members of the Governor's Advisory Council for Exceptional Citizens were involved in the development effort.

Dissemination and Updating of the Administrative Manual

The Exceptional Children/Special Programs Division, Delaware State Department of Public Instruction, is responsible for the dissemination of the Administrative Manual and for dissemination of any changes which the State Board of Education may authorize. Each superintendent, supervisor, and education director should have a copy of the Manual for their use. A copy should also be maintained by the principal of each special education school, and each principal in facilities where exceptional student programs are conducted. Those administrative staff in other agencies who provide special education and related services should also have a copy of the Manual. Multidisciplinary student evaluation teams and individualized education program teams will also need a copy of the Administrative Manual for their use.

The Exceptional Children/Special Programs Division will maintain a record of all holders of the Administrative Manual and will routinely provide any information which creates additions or other changes to the Manual. To take advantage of this service, all holders of the Administrative Manual are asked to complete the form provided in Appendix A and return it to the State Director, Exceptional Children/Special Programs Division, Department of Public Instruction, Townsend Building, P.O. Box 1402, Dover, Delaware, 19903.

Obtaining Additional Information and Technical Assistance

Individuals or groups who may need additional information or interpretation of the content of the Administrative Manual should contact the State Director, Exceptional Children/Special Programs Division, Department of Public Instruction, Townsend Building, P.O. Box 1402, Dover, Delaware, 19903. Telephone: 302/736-5471. SpecialNet: DE.SE.

Adoption of the Manual

Upon adoption by the Delaware State Board of Education, the Administrative Manual shall replace the Administrative Manual for Programs for Exceptional Children, Revised 1/24/85, and its provisions shall supercede those of the Administrative Manual for Programs for Exceptional Children, Revised 1/24/85. Note, however, that for references to specific provisions, the Administrative Manual for Programs for Exceptional Children, Revised 1/24/85, is cited (e.g. Del. Ad. Man.).

This Administrative Manual was adopted by the State Board of Education on March 19, 1987. The provisions contained within the Administrative Manual are effective as of March 1, 1987.

Revision of the Manual

It is the intent of the Exceptional Children/Special Programs Division to ensure periodic revision of the Administrative Manual based upon changes in State and federal laws, rules and regulations and changes found necessary through monitoring to assure a free, appropriate public education for all handicapped students. At the time of initial adoption, there were two major revisions and one major addition scheduled for development and inclusion in

the next revision of the Administrative Manual. Those included the subparts on procedural safeguards and eligibility criteria and definitions, and the section addressing attorney's fees. With the three revisions made to date, major changes have been made by the removal of pre-referral procedures from the Administrative Manual and placed in the Handbook for Delaware Schools, K-8, and the Handbook for Secondary Schools, and a complete redrafting of the definitions and eligibility criteria and the educational surrogate parent subparts. The section addressing attorney's fees remains to be added.

Many individuals and organizations were involved in the development and subsequent revisions of the Administrative Manual. Special recognition is extended to the following individuals and organizations for their leadership and significant contributions throughout the development stages of the Manual: Dr. William M. Lybarger, Mr. Vaughn K. Lauer, Dr. George A. Smith, Dr. Barbara E. Humphreys, Dr. Cherritta Matthews, and Ms. Dee Patterson of the Exceptional Children/Special Programs Division, Marcia Rees, Esq., Deputy Attorney General and Counsel to the State Board of Education, members of the Governor's Advisory Council for Exceptional Citizens, and Dr. Kenneth R. Olsen, Associate Director, Mid-South Regional Resource Center. For their assistance in the revision process, special recognition is extended to members of the Administrative Manual Review Committee who represent the teaching, clinical, administrative, and consumer interests in the education of handicapped students.

Carl M. Haltom

Carl M. Haltom, Ed.D.
Exceptional Children/
Special Programs Division

Revised 2/16/89

I. HANDICAPPED STUDENTS

A. ACCESS TO SPECIAL EDUCATION AND RELATED SERVICES

1. FULL EDUCATIONAL OPPORTUNITY GOAL

All handicapped students shall receive a free, appropriate public education which emphasizes special education and related services designed to meet their unique needs. 34 CFR 300.123; 14 Del. C. §3120.

2. FREE, APPROPRIATE PUBLIC EDUCATION

The State shall provide in the school districts of the State, or in other State institutions and agencies, or in special programs and private agencies as established or approved by the State Board of Education, that each handicapped person as defined in Chapter 31 of the Delaware Code, Title 14, shall receive a free, appropriate public education designed to meet his or her needs. The State Board of Education shall be the agency responsible for the implementation of this required provision. 14 Del. C. §3120.

"Free appropriate public education" means special education that is specially designed instruction, including classroom instruction, physical education instruction, home instruction, and instruction in hospitals and institutions, and related services as defined by State Board of Education rules and regulations and as may be required to assist a handicapped person to benefit from an education that:

a. Is provided at public expense, under the general supervision and direction of the SEA, and without charge, by a school district or other public agency;

b. Meets the standards of the State Board of Education as set forth in Title 14 of the Delaware Code or in the rules and regulations of the Board;

c. Includes elementary, secondary, or vocational education in the State; and

d. Is individualized to meet the unique needs of the handicapped person. 14 Del. C. §3101(2); 34 CFR 300.4.

B. IDENTIFICATION

1. IDENTIFICATION AND REPORTING

Each school district and any other public agency responsible for the education of handicapped students shall identify, locate, and evaluate or reevaluate any handicapped person residing within the confines of that district or other public agency in accordance with the procedures specified in this Manual.

a. The district or other public agency shall maintain and report, upon request, to the Department of Public Instruction, information concerning the time and method of the evaluation or reevaluation of each handicapped person and shall indicate the training, education, or related services he or she is receiving and the location of that training, education or related service.

b. The information maintained shall further indicate any instance in which a handicapped person is not receiving training, education, or related services and the reason for that situation. 14 Del. C. §3122; 34 CFR 300.121.

2. SCREENING

Screening is that process by which a rapid assessment is made to identify candidates for formal evaluation.

a. Screening procedures designed to locate preschool and school age handicapped persons who may need special education and related services shall be adopted and implemented by each district or other public agency. 34 CFR 300.128, 300.220.

b. Health, hearing, vision, and orthopedic screening shall be conducted as specified in The School Nurse: Guide to Responsibilities, Department of Public Instruction.

3. PRE-REFERRAL/REFERRAL FOR ENROLLED STUDENTS

Pre-referral is a process which addresses student learning problems prior to referral.

Referral is the process whereby a written request is made for formal evaluation of a student who is being considered for special education.

a. Each district or other public agency shall adopt and implement procedures which provide for the referral of students who are being considered for special education. All such referrals shall be specified in writing. Each referral shall be reviewed and a determination shall be made and documented stating the disposition of the request.

b. Referrals for individual student evaluation which do not contain all required pre-referral documentation shall be returned to the referral agent with a request for the required information. A determination may be made that additional interventions are warranted and, upon agreement of the referral agent and the representative of the local school district, such interventions may be initiated and documented prior to the initiation of an individual student evaluation. These provisions, however, shall not be used by a school district to delay the provision of an individual student evaluation when all pre-referral data are complete and the referral agent maintains that the student is in need of an individual student evaluation.

c. A parent may initiate a referral for special education at any time. In this event, at the discretion of the parent, regular education pre-referral activities described in the Handbook for Delaware Schools, K-8, and the Handbook for Secondary Schools may be bypassed.

4. WRITTEN NOTICE

a. Requirements

Written notice must be given to the parents of a handicapped child no less than ten (10) working days before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free, appropriate public education to the child, or

(2) Declines to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free, appropriate public education to the child.

34 CFR 300.504(a) 14 Del. C. §3133

b. Content of Notice

(1) The notice shall include:

(a) A full explanation of all of the procedural safeguards available to the parents under Subpart K;

(b) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(c) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(d) A description of any other factors which are relevant to the agency's proposal or refusal.

(2) The notice must be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to ensure:

(a) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) That the parent understands the content of the notice; and

(c) That there is written evidence that the requirements in paragraphs (3) (a) and (b) of this section have been met.

34 CFR 300.505

C. EVALUATION

1. INFORMED PARENTAL CONSENT

Parental consent shall be obtained before conducting a preplacement evaluation. 34 CFR 300.504(b)(i).

2. SCOPE AND CONTENT OF THE INDIVIDUAL STUDENT EVALUATION

Individual student evaluation is the systematic examination of the medical, physical, psychological, social and educational characteristics of a student for the purpose of determining whether or not the student has a handicapping condition which adversely affects educational performance and what needs exist for special education and related services.

a. The scope of the evaluation process and the use of any additional evaluative techniques shall be determined by the nature and severity of the student's handicap. Placement shall not be made solely on the basis of a single assessment or on the basis of evaluation materials that have not been properly validated.

b. Tests and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

c. Evaluation materials shall be selected on the basis of the nature and severity of the student's handicap and administered in accordance with standardized procedures by trained, qualified evaluation specialists.

d. Evaluation materials shall be administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

e. Evaluation materials shall be selected and administered to best ensure that their results are minimally affected by impaired sensory, manual, or speaking skills, except where these skills are the factors being measured.

34 CFR 300.532

3. MULTIDISCIPLINARY TEAM

The evaluation and reevaluation of the student shall be conducted by a multidisciplinary team (MDT) of qualified evaluation specialists, including at least one certified teacher or other specialist with knowledge in the area of suspected disability. 34 CFR 300.532(3)(e).

a. Multidisciplinary Team Purpose

It shall be the purpose of the multidisciplinary team to conduct evaluations and reevaluations, determine the nature of the handicapping condition, and determine the eligibility of the student to receive special education and related services.

b. Multidisciplinary Team Composition

The multidisciplinary evaluation team shall include:

(1) the student's current teacher(s), or if the student does not currently have a teacher, a regular classroom teacher qualified to teach a student of his or her age; or for a child of less than school age, an individual qualified by the State Educational Agency to teach a child of his or her age;

(2) at least one person qualified to conduct the appropriate individual diagnostic examination(s) of that student, such as a school psychologist, speech pathologist, or remedial reading teacher; and

(3) the student's current teacher for the initial evaluation of students suspected of having a learning disability.

34 CFR 300.540.

4. QUALIFIED EVALUATION SPECIALISTS

"Qualified evaluation specialist" means that a person has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.

34 CFR 300.12.

5. INITIAL EVALUATION

Before any action is taken with respect to the initial placement of a handicapped student in a special education program, a full and individual evaluation of the student's educational needs shall be conducted in accordance with the following requirements.

a. Each initial evaluation shall include:

(1) an educational evaluation;

(2) an educational history, including a review of pre-referral intervention documentation;

(3) information concerning physical condition;

(4) information concerning socio-cultural background;

(5) information concerning behavior in home and school; and

(6) specialist reports in accordance with Section 2 of Subpart E.

34 CFR 300.531

b. The student shall be assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 CFR 300.532(f).

c. Each evaluation shall be completed in a manner which:

(1) allows sufficient time for the full range of assessments indicated to be completed;

(2) provides the MDT with sufficient information to determine the nature of the handicapping condition and eligibility of the student for services; and

(3) precludes undue delay in the implementation of services for eligible students.

d. The MDT shall document, either in meeting minutes or in written report, conclusions resulting from the evaluation. Each team member shall certify whether or not the report reflects his or her conclusions. If it does not, the team member shall have an opportunity to attach a separate statement presenting his or her conclusions.

(1) When evaluating a student suspected of having a learning disability, the following additional requirements shall be met:

(a) At least one multidisciplinary team member other than the student's teacher shall observe the student's academic performance in the regular classroom setting. When a child is less than school age or is out of school, a team member shall observe the child in an environment appropriate for a child of that age; and

(b) The MDT proceedings shall be documented in a written report of the results of the evaluation, and shall include statements regarding:

(i) whether or not the student has a specific learning disability and the nature of that disability;

(ii) the basis for making the determination;

(iii) the relevant behavior noted during the observation of the student;

(iv) the relationship of that behavior to the student's academic functioning;

(v) the educationally relevant medical findings, if any;

(vi) the severity of the discrepancy between achievement and ability which is not correctable without special education and related services; and

(vii) the determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether or not the report reflects his or her conclusions. If it does not, the team member must submit a separate statement presenting his or her conclusions.
34 CFR 300.540-300.543.

6. BIAS-FREE TESTS AND PROCEDURES

a. Testing and evaluation materials and procedures shall be selected and administered so as not to be racially or culturally biased. 34 CFR 300.530(b)

b. Native Language

Tests and other evaluation materials shall be provided and administered in the student's native language, or other mode of communication, unless it is clearly not feasible to do so. A student shall not be assigned to a special education program on the basis of findings dependent solely upon the command of the English language. The total resources found within the State are to be utilized to ensure non-biased student evaluation. 34 CFR 300.530(b)

c. Testing Students with Impaired Sensory, Manual or Speaking Skills

Tests shall be selected and administered so as to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude, achievement level or other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure). 34 CFR 300.532 (b)

7. INTERPRETATION AND APPLICATION OF DATA

In interpreting evaluation data, each district or any other public agency shall:

a. ensure that eligibility decisions are made on the basis of evaluation data which are no more than two years old;

b. draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior/assessments; and

c. ensure that information obtained from all of these sources is documented and carefully considered.

8. REEVALUATION

Reevaluation is the process whereby information about a student is periodically gathered and reviewed to determine the continued appropriateness of the special education and related services being provided.

a. A formal reevaluation of the student shall be conducted by the school district or other public agency at least every third year following initial placement or sooner if conditions warrant or if the student's parent or teacher requests an evaluation. The formal reevaluation shall comply with all of the requirements of the initial evaluation procedures prescribed in this Manual except for obtaining informed parental consent. In place of parental consent, written notice must be provided as specified under I.B.4.a.(1) of this Manual. 34 CFR 300.534(b).

b. If the reevaluation occurs within one year of the student's entering 9th grade or reaching the age of 14 years, whichever occurs first, the school district or other public agency shall provide information useful in career guidance as determined by the MDT in consultation with guidance personnel.

(1) If the reevaluation occurs within two or three years of the student's entering 9th grade or reaching the age of 14, whichever occurs first, the provision of career guidance information may be deferred. However, such information shall be provided within one year of the student's entering 9th grade or reaching the age of 14 years, whichever occurs first.

(2) If a school district or other public agency receives federal vocational educational funds, the MDT, in consultation with guidance personnel, shall determine whether or not a student is likely to pursue an academic career. If not, arrangements shall be made to complete a vocational evaluation during the ninth grade year.

The evaluation may include vocational exploratory activity in addition to other standard assessment procedures and instruments. The evaluation report shall include information pertaining to student aptitudes, interests, special skills, abilities, and needs.

9. INDEPENDENT EDUCATIONAL EVALUATION

The parents of a handicapped student have the right to obtain an independent educational evaluation of the student.

a. Each school district or other public agency shall provide to parents, on request, information about where a public or private independent educational evaluation may be obtained.

b. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the district or any other public agency. However, the school district or any other public agency may initiate a hearing under Subpart K of Part I of this Manual to show that the district evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent retains the right to an independent educational evaluation, but not at public expense.

   (1) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the district or any other public agency responsible for the education of the student in question.

   (2) "Public expense" means that the district or any other public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

c. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

   (1) must be considered by the district or any other public agency in any decision made with respect to the provision of a free, appropriate public education to the student.

   (2) may be presented as evidence at a hearing regarding that student.

d. If a Due Process Hearing Panel convened pursuant to Subpart K, Sections 5 through 11, of Part I of this Manual, requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

e. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the district or any other public agency uses when it initiates an evaluation.

34 CFR 300.503

D. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

1. IEP REQUIRED

Each school district or other public agency responsible for the education of handicapped students shall ensure that each handicapped student receiving special education from that agency has an Individualized Education Program (IEP) that is in effect and current for the school year and program placement.

a. An IEP shall be developed prior to assignment and within thirty (30) calendar days following the determination that a student is eligible for special education and related services.

b. An IEP shall be in effect prior to the provision of special education and related services to a student.

c. An IEP shall be implemented as soon as possible and in accordance with the student IEP. 34 CFR 300.342.

2. CONTENT OF IEP

Each handicapped student shall have a single IEP which shall include written statements of:

a. the student's present level of educational performance;

b. annual goals, including short term instructional objectives;

c. specific special education and related services to be provided to the student, including physical education and vocational education, which are specially designed to meet the unique needs of a handicapped student;

d. the extent to which the student will be able to participate in regular education programs;

e. the projected dates for initiation of services and the anticipated duration of the services;

f. appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved, 34 CFR 300.346;

g. whether or not it is necessary to place the student who is transported from school by bus into the charge of a parent or other authorized responsible person, (Supplement to: School Bus Drivers' Handbook, p. 59, Section 6, Paragraph III F, December 19, 1985);

h. documentation of consideration of Least Restrictive Environment (LRE) requirements;

i. where applicable, a vocational/transitional component as specified in Section 8 of this Subpart and Section 21 of Subpart F; and

j. disciplinary procedures or limitations, as appropriate.

3. RESPONSIBILITY FOR IEP

a. Each school district or other public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped student's individualized education program. 34 CFR 300.343.

b. Participants at an IEP meeting shall be collectively identified as the IEP team. It shall be the responsibility of the team to develop, review, and revise a handicapped student's IEP, to determine program placement, and to make the determination for dismissal of the student from special education.

4. IEP TEAM MEETING PARTICIPANTS

Each school district or other public agency shall ensure that each IEP meeting includes the following participants:

a. a representative of the school district or other public agency, other than the student's teacher, who is qualified to provide or supervise the provision of special education;

b. the student's current teacher;

c. one or both of the student's parents or guardians;

d. the student, when appropriate;

e. other individuals at the discretion of the parent or the school district or other public agency; and

f. for the handicapped student who has been evaluated for the first time, or who has been reevaluated, the school district or other public agency shall ensure:

(1) that a member of the evaluation team participates in the meeting; or

(2) that a representative of the school district or other public agency, the student's regular classroom teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation.

34 CFR 300.344

5. FREQUENCY OF IEP MEETINGS

Each school district or other public agency shall initiate and conduct meetings to periodically review each child's individualized education program and, if appropriate, revise its provisions. A meeting shall be held for this purpose at least once a year." 34 CFR 300.343(d).

6. PARENT PARTICIPATION

a. Each school district or other public agency shall take steps to ensure that one or both of the student's parents, guardians, surrogate parents, or persons acting in loco parentis are present at each meeting or are afforded the opportunity to participate by:

(1) notifying parents of the meeting no less than ten (10) working days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend; and

(2) scheduling the meetings at a mutually agreed upon time and place.

b. A written notice to the parent must indicate the purpose, time, and location of the meeting and who will be in attendance.

c. If neither parent can attend, the school district or other public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

d. A meeting may be conducted without a parent in attendance if the school district or other public agency is unable to obtain the attendance of the parents. In this case, the district or agency shall maintain a record of its attempts to arrange a mutually agreed on time and place. Documentation records shall include such items as:

(1) detailed record of telephone calls made or attempted, and the results of those calls;

(2) copies of correspondence sent to the parents and any responses received; and

(3) detailed records of visits made to the parent's home or place of employment, and the results of those visits.

e. In the event that parents of a handicapped student cannot be located or are otherwise unavailable, an educational surrogate parent shall be appointed in accordance with Subpart J of this Manual.

f. The school district or other public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

g. On request, the school district or other public agency shall give a copy of the student's IEP to the parent.

34 CFR 300.345

7. DISSEMINATION OF PROGRAM PLANNING INFORMATION

Each school district or other public agency shall provide and document in the IEP that the year prior to entering the 9th grade, each handicapped student and/or student's parent is given the same program planning information as is given to non-handicapped students and their parents. In no case shall this information include less than the following:

a. Diploma requirements:

(1) credit distribution,
(2) fulfillment of the 17 Minimal Performance Requirements,
(3) attendance;

b. Option to work toward a Record of Performance;

c. Option to continue free public schooling through age twenty, inclusive, or until completing high school, whichever occurs first; and

d. Information and opportunities available in:

(1) career education (emphasis on post-secondary level), and/or
(2) vocational education (emphasis on secondary level).

8. PLANNING FOR HIGH SCHOOL LEVEL EDUCATION

Each district or other public agency providing special education, related services and/or vocational education programs shall ensure that long-range planning occurs for each handicapped student. For the IEP developed or revised within the year prior to the student entering the ninth grade, the IEP Team shall develop or revise a plan for the student which meets the following conditions:

a. For graduation/completion, the student's IEP shall indicate:

(1) provisions for modified learning activities in areas associated with the 17 Minimal Performance Requirements and in the required subjects for graduation;

(2) arrangements for involvement with non-handicapped peers in the required and elective courses to an extent consistent with the principle of the Least Restrictive Environment (LRE); and

(3) where applicable, the vocational education programs to be provided, including:

(a) adaptations of curricula, instructional equipment and facilities;

(b) staffing by guidance, counseling, and career development personnel who are associated with the provision of such special services; and

(c) counseling services designed to facilitate transition from school to post-school employment and career opportunities.

b. An IEP developed or revised under this section shall indicate:

(1) the extent to which the student may accumulate sufficient credits for graduation;

(2) the extent to which the student may meet the State's 17 Minimal Performance Requirements for graduation; and

(3) whether or not the plan will lead to a diploma, and, if not, what skills and/or competencies are anticipated to be reflected by a Record of Performance.

c. An IEP developed or revised under this section shall be developed in cooperation with representatives of vocational education, vocational rehabilitation, special education, regular education, counseling and other human services as appropriate.

d. An IEP developed or revised under this section shall contain the IEP team's decisions on all areas of Subsection a. above.

e. An IEP developed under this section shall contain the signature of the parent or guardian indicating participation in the development of the plan, or shall document that attempts were made to involve the parent or guardian where an IEP is unsigned. 34 CFR 300.344, 300.345.

9. MONITORING IEPs

As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with State and federal requirements, the school district or other public agency shall review the IEPs of handicapped students to determine that their content is consistent with Section D, 2, a-j of this Manual. Documentation of monitoring efforts shall be maintained. 34 CFR 300.130.

10. IEP AND PRIVATE/PAROCHIAL SCHOOLS

If a handicapped student is enrolled in a parochial or other private school and receives special education or related services from a school district or other public agency, the school district or public agency shall:

a. Initiate and conduct meetings to develop, review, and revise an IEP for the student in accordance with provisions of this Subsection; and

b. Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls. 34 CFR 300.348.

11. IEP AND PRIVATE SCHOOL PLACEMENT

a. Developing Individualized Education Programs

(1) Before a school district or other public agency places a handicapped student in, or refers a student to, a private school or facility, the district or agency shall initiate and conduct a meeting to develop an IEP for the student in accordance with provisions of this Subsection.

(2) The school district or other agency shall ensure that a representative of the private school facility attends the meeting. If the representative cannot attend, the district or agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) The school district or other public agency shall also develop an IEP for each handicapped student who was placed in a private school or facility by the school district or other public agency before the effective date of these regulations.

b. Reviewing and Revising Individualized Education Programs

(1) After a handicapped student enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the school district or other public agency.

(2) If the private school or facility initiates and conducts these meetings, the school district or other public agency shall ensure that the parents and a school district or an agency representative:

(a) are involved in any decision about the student's IEP; and

(b) agree to any proposed changes in the program before those changes are implemented.

c. Responsibility

If a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the school district or other public agency responsible for the education of the handicapped student and the Department of Public Instruction. 34 CFR 300.347.

12. IEP OF TRANSFERRING HANDICAPPED STUDENT

A handicapped student who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the student's needs based on a decision mutually agreed upon by the parent(s) and representative of the receiving school district or other public agency.

a. The request for, and the forwarding of, handicapped student records shall be in accordance with procedures enumerated in the Procedures for the Collection, Maintenance, and Disclosure of Student Data in the Handbook for Delaware Schools, K-8, Appendix B and in the Handbook for Secondary Schools, Appendix A.

b. A student's IEP from the sending school district or other public agency may be acceptable for temporary placement in a special education setting. Such placement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

c. A review of the adequacy of placement in a special education setting shall be instituted and completed within thirty calendar days from the date of initial attendance of the child in the receiving agency. All requirements concerning student evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring students.

E. ELIGIBILITY

(Note: The change in content of Subpart I.E., ELIGIBILITY, was approved by the Delaware State Board of Education at its February 16, 1989, meeting, to become effective July 1, 1989.)

1. AGE OF ELIGIBILITY

Programs shall be provided for handicapped persons in age ranges as set out in accordance with Chapter 31 of Title 14 of the Delaware Code and other age ranges as provided for by State and/or federal legislation.

a. In programs for handicapped persons, the student shall be the minimum age on or before December 31 of the school year. Handicapped students reaching the minimum age after December 31, may be granted an exception to the minimum age requirement if recommended by a staff conference and approved by the district superintendent; however, such students shall not be counted for unit funding.

b. Students in special education who attain age 21 after September 30 may continue their school placement until the end of the school year; however, students who are in a twelve-month private placement and who have not attained the age of 21 as of July 1 may continue in that private placement to the end of that fiscal year.

c. The age of eligibility for special education and related services for students identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive. The age of eligibility for students identified as having a severe or trainable mental handicap or orthopedic impairment shall be from three through 20 years, inclusive. The age of eligibility for students identified as having an educable mental handicap, serious emotional disturbance, learning disability or speech impairment, shall be four through 20 years, inclusive.

14 Del. C. 3101.

2. DEFINITIONS AND ELIGIBILITY/EXIT CRITERIA

a. Eligibility Criteria - General

A student shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 Del. C. §1703, when such eligibility and the nature of the handicapping condition are determined by a multidisciplinary team as referenced under I.C.3. above. Eligibility and the nature of the handicapping condition shall be based upon consideration of the results of individual student evaluation data obtained from reports and observations and the definitions and criteria contained in Section I.E.2.a.

through i. of this Manual. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the handicapping condition. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist as referenced in I.C.4. above. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each handicapping condition.

b. Exit Criteria - General

A student ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the student to benefit from his or her educational program. In making the determination, the team shall consider:

(1) Eligibility criteria;

(2) Data-based and/or documented measures of educational progress; and

(3) Other relevant information.

c. Specific Criteria

(1) Autism

(a) Definition

Autism is a behaviorally defined syndrome characterized by a significant impairment in the development of communication skills and reciprocal social interactions and orientation. Autism is frequently associated with a variety of other features including, but not limited to, a restricted repertoire of activities and interests, stereotypic and repetitive behaviors, uneven rates of development, and/or self-injurious behavior. The severity and expression of these features may vary widely from student from student.

(b) Eligibility Criteria

A multidisciplinary team shall review evidence for the following behavioral manifestations:

(i) The presence of an impairment of communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:

(ii) Impairment in reciprocal social orientation/interaction; and/or

(iii) Extreme resistance to change and/or control; and/or

(iv) Preoccupation with objects and/or inappropriate use of objects; and/or

(v) Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.

Identification of autism shall be documented through an evaluation by a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by a multidisciplinary team (Paragraph I.C.b.(2)) (Subparagraph I.G.9.a.(2).(a).).

The age of eligibility for students identified under this definition shall be from birth through 20 years, inclusive.

(2) Deaf/Blind

(a) Definition

Deaf/blindness is a compound sensory disability comprised of concomitant hearing and visual impairments, or the functional manifestation of these impairments, which, in combination, result in severe communication, developmental and educational problems. These problems can be properly addressed only with specialized intervention and services beyond those available in special education programs for students with a single sensory deficit.

(b) Eligibility Criteria

A multidisciplinary team shall consider the following in making a determination that a student has a deaf-blind condition:

(i) A qualified physician or certified audiologist shall document that a student has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and

(ii) A licensed ophthalmologist or optometrist shall document that a student has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees; and

(iii) A multidisciplinary team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the student's condition in determining eligibility for special education under the above definition.

The age of eligibility for students identified under this definition shall be from birth through 20 years, inclusive.

(3) Hearing Impairment

(a) Definition

A hearing impairment is a sensory dysfunction in the peripheral auditory mechanism which adversely affects developmental growth or educational performance, or both, to such an extent that it substantially interferes with communication, developmental and/or educational processes. It is further defined as being a loss of hearing due to: (a) Conductive Impairment, a dysfunction of the outer and/or middle ear; or (b) Sensorineural Impairment, a dysfunction of the inner ear or pathway to the brainstem. A peripheral impairment does not include auditory dysfunction along the pathways of the brain from the brainstem to and including the cerebral cortex.

In assessment for needs and services, hearing impairment is to be considered within two broad functional classifications:

Hard of Hearing - The impairment, whether permanent or fluctuating, adversely affects the student's receptive and/or expressive communication, developmental growth, and/or educational performance and makes difficult, but does not preclude, the processing of linguistic information through hearing, with or without amplification; and

Deaf - The impairment is so severe that the student cannot effectively process linguistic information through hearing, with or without amplification. This condition adversely affects expressive or receptive communication or both, developmental growth, and/or educational performance.

(b) Eligibility Criteria

(i) A qualified physician or certified audiologist shall document that a student has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

(ii) A multidisciplinary team shall consider the documentation of hearing impairment in addition to other information relevant to the student's condition in determining eligibility for special education under the above definition.

The age of eligibility for students identified under this definition shall be from birth through 20 years, inclusive.

(4) Learning Disability

(a) Definition

A learning disability is an impairment of one or more basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself as a deficit in the functional ability to listen, speak, read, write or spell, or to perform mathematic tasks. It may be indicated after a student has received systematic instructional intervention over a period of time which fails to alleviate the deficit. The term includes, but is not limited to, such conditions described as perceptual handicaps, central auditory processing deficits, brain injury, attention deficit disorders, hyperactivity, dyslexia, and developmental aphasia. A learning disability may occur concomitantly with, but shall not be primarily the result of, other handicapping conditions such as visual, hearing, or motor handicap, mental handicap, autism, serious emotional disturbance, or environmental, cultural, and/or economic influences.

(b) Eligibility Criteria

A multidisciplinary team shall consider the following in making a determination that a student has a learning disability:

(i) The student is unable to perform at grade level expectation in a regular education or preschool placement, and the student's performance is characterized by:

(aa) Current functioning significantly below grade level in core achievement areas as a result of difficulty in the areas of basic reading skill, reading comprehension, written expression, expressive language, mathematic reasoning or calculation, or listening comprehension; or

(bb) Inability to successfully complete academic tasks at a rate comparable to peers despite adaptations to the instructional program (e.g., changes in instructional material, method, shortened assignments, etc.)

(ii) The multidisciplinary team finds that a student has a severe discrepancy between intellectual ability and achievement in one or more of the following areas as determined by Identification Procedures of Appendix B:

(aa) Basic reading skill;

(bb) Reading comprehension;

(cc) Mathematic calculation;

(dd) Mathematic reasoning;

(ee) Written expression;

(ff) Listening Comprehension;

(gg) Expressive Language; or

(hh) Perceptual disorder (visual, auditory, motor, attentive).

If a student does not meet the criterion for a severe discrepancy, and the MDT determines the student to have a learning disability, written justification for this conclusion shall be provided in the MDT minutes/report, which includes the basis for concluding that a severe discrepancy exists and an explanation of why it was not found during testing.

(iii) The multidisciplinary team shall not identify a student as having a learning disability if the student: (a) is benefitting from the regular classroom without special education services; (b) does not exhibit a substantial discrepancy between ability and achievement; or (c) if the discrepancy is primarily the result of:

(aa) A visual, hearing or motor handicap;

(bb) A mental handicap;

(cc) Autism;

(dd) A serious emotional disturbance; and/or

(ee) Environmental, cultural or economic influence.

The age of eligibility for students identified under this definition shall be from age four through 20 years, inclusive.

(5) Mental Handicap

(Former Manual Title - Mentally Retarded)

(a) Definition

Mental handicap is a condition describing significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Specifically, this condition refers to those individuals whose performance on an individual intelligence test falls below a full scale I.Q. score of 70, ± five I.Q. points and displays a significantly subaverage level of adaptive behavior. In this context, adaptive behavior refers to the degree to which the student meets the standards of personal independence and social responsibility, representing reasoning and judgment in mastery of the environment, expected for his or her age and cultural group. Mental handicap is further defined by degree and by level of adaptive behavior.

(i) Degree of mental handicap is further defined as follows:

(aa) Educable Mental Handicap (EMH) - I.Q. 50-70, ± 5 points;

(bb) Trainable Mental Handicap (TMH) - I.Q. 35-50, ± 5 points;

(cc) Severe Mental Handicap (SMH) - I.Q. below 35.

The adaptive behavior characteristics associated with each degree of mental handicap can be expressed in general terms across preschool, school-aged, and 18 year and older groups. At a preschool level, students whose handicapping condition has been identified as EMH develop social and communication skills, experience minimal delays in sensorimotor areas, and are often not distinguishable from their non-mentally handicapped peers until a later age. At school age, they learn basic literacy, and by later adolescence, vocational skills, and they develop social competence. By the age of 18, they achieve social and vocational skills adequate for independent living and self-support, occasionally needing assistance under demanding social or economic conditions.

At a preschool level, students whose handicapping condition has been identified as TMH can develop social and communication skills with moderate developmental delays. At a school-aged level, they learn functional academic, social and vocational skills. By the age of 18, they are capable of self-maintenance in competitive or supportive employment, but may need periodic or on-going support under demanding social or economic conditions.

At a preschool level, students whose handicapping condition has been identified as SMH are generally dependent for care in all areas, able to develop little or no social or communication skills. At a school-aged level, they are able to develop only limited basic self-help and social and prevocational skills. By the age of 18, they may contribute to self-support under supervision, may develop self-help and social skills to a limited degree, but remain dependent in a supportive environment.

(b) Eligibility Criteria

A multidisciplinary team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a student has a mental handicap and the degree of mental handicap.

The age of eligibility for students identified under the EMH definition shall be from age four through 20 years, inclusive.

The age of eligibility for students identified under the TMH and SMH definitions shall be from age three through 20 years, inclusive.

(6) Physical Impairment

(Former Manual Title - Physical or Other Health Impaired)

(a) Definition

A physical impairment is an orthopedic handicap and/or other health impairment which involves skeletal, neural, muscular, respiratory, circulatory, digestive, skin or related disorder caused by congenital anomaly, disease, and/or trauma. Examples of orthopedic handicaps include, but are not limited to: cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogryposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.

(b) Eligibility Criteria

(i) A qualified physician shall document that a student has a physical impairment in order to be considered for special education and related services under the above definition.

(ii) A multidisciplinary team shall consider the student's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:

(aa) Muscular or neuromuscular handicap(s) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

(bb) Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

(cc) Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

(iii) Determination by the multidisciplinary team of eligibility for services shall be based upon data obtained from:

(aa) Medical records documenting the physical impairment (required), and current medical prescriptions (e.g., O.T./P.T., medication, catheterization, tube feeding, etc.) if available;

(bb) Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist;

(cc) Prior program or school records (if available); and

(dd) When determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.

The age of eligibility for students identified under this definition shall be from age four through 20 years, inclusive, except for students having an orthopedic handicap. In the latter instance, the age of eligibility shall be from three through 20 years, inclusive.

(7) Serious Emotional Disturbance

(Former Manual title - Social or Emotional Maladjustment)

(a) Definition

A serious emotional disturbance is an emotional condition which manifests itself in one or more of the following clusters or patterns of behavior:

(i) Seriously deviant thought processes as indicated by unusual communication or behavioral patterns, or both, including, but not limited to, Schizophrenia;

(ii) Seriously withdrawn or anxious behaviors, including the tendency to develop physical symptoms or fears associated with personal or school problems;

(iii) Seriously disruptive or aggressive behaviors; and

(iv) Serious difficulty in making personal adjustment, or in establishing and maintaining of satisfactory and age-appropriate interpersonal relationships.

These clusters or patterns of behaviors must:

(i) Be situationally inappropriate over a significant period of time and deviate substantially from behavior appropriate to the student's age; and

(ii) Adversely affect the student's learning and educational performance.

The term does not include a student who can be identified as being "socially maladjusted" unless the student also exhibits a serious emotional disturbance, as defined above.

(b) Eligibility Criteria

A multidisciplinary team shall consider documentation of the manifestation of the above clusters or patterns of behavior associated with serious emotional disturbance, and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the multidisciplinary team, a review of records, standardized rating scales, and student interviews. The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

(i) Are situationally inappropriate for the student's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer group; or

(ii) Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the student exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

(iii) Adversely affect learning and educational performance. This means that the student's emotions and behaviors directly interfere with learning and educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse.

The age of eligibility for students identified under this definition shall be from age four through 20 years, inclusive.

(8) Speech and/or Language Impairment

(a) Definition

A speech or language impairment is a communication disorder involving auditory comprehension and processing, articulation, voice, fluency, expressive language, and/or pragmatics to such a degree that it interferes with a student's overall communicative performance, including educational, social/emotional, and/or vocational functioning.

(b) Eligibility Criteria

In determining eligibility under the Speech and/or Language classification, the multidisciplinary team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions:

(i) An articulation disorder;

(ii) A language disorder;

(iii) Dysfluent speech; and/or

(iv) A voice disorder.

The age of eligibility for students identified under this definition shall be from age four through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary handicapping condition.

(9) Visual Impairment

(a) Definition

Visual impairment is a sensory disability which is described in terms of degree of loss, as follows:

(i) Legally Blind - a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

(ii) Partially Sighted - a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually.

A visual impairment may be accompanied by one or more additional disability(ies), but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

(b) Eligibility Criteria

(i) A licensed ophthalmologist or optometrist shall document that a student has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees (legally blind), or a visual acuity of 20/70 or less in the better eye after all correction (partially sighted);

(ii) A multidisciplinary team shall consider the documentation of visual impairment in addition to other information relevant to the student's condition in determining eligibility for special education under the above definition.

The age of eligibility for students identified under this definition shall be from birth through 20 years, inclusive.

F. PROGRAMS AND PLACEMENT

1. ADMINISTRATION OF SPECIAL EDUCATION PROGRAMS AND SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT

a. Each school district or other public agency shall ensure:

(1) that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 CFR 300.550(b).

b. Each district, individually or in consortium arrangement, shall assume administrative and leadership responsibility for district-wide programming for handicapped students, exclusive of any special school programs administered by the district(s). If a special education unit is used for this purpose, the sole responsibility of the person filling the position shall be supervision of programs for exceptional children, and the individual shall be a teacher, coordinator, supervisor or director certified in the area of exceptional children. Del. Ad. Man. p. 20

2. DISTRICT OR OTHER PUBLIC AGENCY OPERATIONAL PLAN

a. The continuum of alternative program placements provided and the consortium of arrangements necessary between and among other districts or any other public agency(ies) shall be delineated in a district's or agency's Operational Plan. The district or agency Operational Plan shall be reviewed and revised as needed. The Operational Plan shall be submitted to the State Board of Education for approval each year.

b. Each district or agency plan shall include, but not be limited to:

(1) A design for delivery of services to all exceptional students in the jurisdiction of the school district or public agency;

(2) A description of the continuum of programs and related services;

(3) The policies and procedures which relate to:

(a) Child identification;
(b) IEP development, implementation, review and revision;

(c) criteria for determining eligibility and placement in accordance with LRE requirements;
(d) procedural safeguards;
(e) facilities, equipment and materials;
(f) personnel development;
(g) program monitoring and evaluation; and
(h) use of funds.

34 CFR 300.220-.240, 300.600; Del. Ad. Man. pp. 19-20

3. CONTINUUM OF ALTERNATIVE PROGRAM PLACEMENTS

Educational programs and supportive services of each district shall offer a range of alternative program placements in public programs designed to meet the individual needs of all handicapped students who are residents of that district. Such a continuum of alternative program placements, developed in consultation with the State Department of Public Instruction and other public agencies, shall consider the uniqueness of individuals and the variations in their educational needs. 34 CFR 300.551, 300.552. The continuum shall be as follows:

Level I - Regular classroom with consultant services.

Level II - Regular classroom with supportive or part-time services (resource room).

Level III - Special education classroom with part-time mainstream experiences.

Level IV - Full time special education classroom (full school day).

Level V - Special school.

Level VI - Supportive instruction at school, home, or hospital.

Level VII - Residential schools and treatment centers.

4. CONTINUUM OF ALTERNATIVE PROGRAM PLACEMENTS: DISTRICT RESPONSIBILITIES

a. It shall be the responsibility of each school district to make available educational programs for Levels I through IV. The location of Level IV is dependent on the number and needs of children and shall be consistent with the principles of Least Restrictive Environment enumerated under I.F.7., 8., 9., 10, and 11., below.

b. Cooperative Agreements shall be required for programs at Levels V and VII, and shall:

(1) Delineate the roles and responsibilities of all school districts or other public agencies;

(2) Be signed by the chief administrators of all such school districts or other public agencies; and

(3) Be approved by the State Board of Education.

c. Level VI consists of supportive instruction and related services for handicapped students. This level of service provides an alternative special education program at home, hospital or related site for students suffering from an illness or injury. For other handicapped students it may be the level of service which assures a free, appropriate public education.

For non-handicapped students, supportive instruction shall be provided according to the Handbook for Delaware Schools, K-8, or the Handbook for Secondary Schools, depending on the educational level of the student.

In extraordinary instances where the student is a danger to himself or to herself, or is so disruptive that his or her behavior substantially interferes with the learning of other students in the class, the IEP team may provide the student with supportive instruction and related services at home in lieu of the student's present educational placement in order to ensure the student a free, appropriate public education (see I.I.1.a.(6)(a)). However, Level VI placement under this condition shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with requirements for the provision of a free, appropriate public education. In instances of parental objection to such home instruction, the provisions of I.K.12.a. and/or I.I.1.a.(6)(b) shall apply.

(1) To be eligible for supportive instruction and related services, Level VI, the following criteria shall be fulfilled:

The student shall be an identified handicapped student enrolled in the school district or other public educational program and -

(a) if absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; or

(b) if absence is due to severe adjustment problem, be documented by an IEP team, including a licensed or certified school psychologist or licensed psychiatrist, that such placement is both necessary and temporary; or

(c) if for transitional in-school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.

(2) IEPs specifying services under Level VI provisions shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

(3) The student's curriculum shall be determined by the IEP.

(4) Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school where it is determined by the IEP team that the student needs a transitional program to facilitate his or her return to the school program.

(5) A home-to-school telecommunication instructional system may be provided when deemed suitable by the IEP team. Negotiations for installation, removal, and costs shall be between the local school district and the vendor (payable from allocations for homebound instruction.) When a home-to-school telecommunication instructional system is provided, the coordinating teacher, or, in the case of departmentalized instruction, the teacher of each basic subject area may be authorized to visit the home as needed to give assistance.

(6) When a student is in a departmentalized program of instruction, more than one teacher may be assigned.

(7) Supportive instruction which is specified on the student IEP, for the regular school term and/or the summer term, shall be paid for with State funds at the hourly rate as set by the Department of Public Instruction. However, nothing in these regulations shall be construed to prevent a local school district from paying a higher hourly rate for teachers' services so long as the higher rate is supported by local or Division III funds. Funds for teacher travel in the provision of supportive instruction in the home, hospital, or related site, are to be provided by the local school district subject to reimbursement annually upon request to the Department of Public Instruction.

(8) Related service which is specified on the student IEP for the regular school term and/or the summer term shall be paid from funds allocated for the provision of related services.

d. Programs may be developed at Levels I through III that serve students with a wide range of handicapping conditions in a common setting as long as such programs provide for the implementation of IEPs, are age-appropriate, and provide services (direct/consultative) to each handicapped student by a certified special education teacher.

5. CONTINUUM OF VOCATIONAL PLACEMENTS

Each school district or other public agency shall ensure the provision of an appropriate vocational education as determined by the IEP team through the availability of a continuum of vocational education placements. The continuum of placements includes, but is not limited to:

a. regular vocational programs with no supportive services;

b. regular vocational programs with supportive services as identified by the IEP team;

c. special vocational programs; and

d. self-contained vocational programs at special schools.

34 CFR 300.305

6. INFORMED PARENTAL CONSENT

Informed parental consent shall be obtained in writing before initial placement of a handicapped child in a program providing special education and related services. 34 CFR 300.504(b)(1).

7. PLACEMENT DECISIONS BASED ON IEP

Each school district or other public agency shall ensure that each handicapped student's educational placement is determined at least annually, is based on his or her IEP, and that in making placement decisions, each school district or other public agency shall:

a. draw upon evaluation data and other information obtained during the evaluation process under I.C.7.;

b. ensure that the placement decision is made by a group of persons knowledgeable about the child, the meaning of evaluation data, and placement options; and

c. ensure that the placement decision is made in conformity with the least restrictive environment provisions in I.F.8.,9.,10., and 11., below.

34 CFR 300.533, 300.552, 300.346.

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Placement decisions shall not be based on any of the following factors used alone or in combination:

a. category of handicapping condition;

b. configuration of the service delivery system;

c. availability of educational or related services;

d. availability of space; and

e. curriculum content or methods of curriculum delivery.

8. LOCATION OF PLACEMENT

a. Each public agency shall ensure that each handicapped student's educational placement is as close as possible to the student's home. 34 CFR 300.552(a)(3).

b. Each public agency shall ensure that, unless a handicapped student's IEP requires some other arrangement, the student is educated in the school which he or she would attend if not handicapped. 34 CFR 300.552(c).

9. AGE-APPROPRIATE PLACEMENT

When a handicapped student is placed in other than a regular classroom, a chronologically age-appropriate placement is to be provided.

10. PARTICIPATION IN REGULAR EDUCATION/INTERACTION WITH NON-HANDICAPPED PEERS

a. Each district or other public agency shall ensure that, to the maximum extent appropriate, handicapped students, including students in public and private institutions or other care facilities, are educated with children who are not handicapped. 34 CFR 300.550(b)(1).

b. Each district or other public agency responsible for the education of handicapped students shall ensure that, in special classes, a separate educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 300.550(b)(2).

11. HARMFUL EFFECTS ON PROGRESS

Each district or other public agency shall ensure that, in selecting the least restrictive environment, consideration is given to any potentially harmful effect on the student or on the quality of services which he or she needs. 34 CFR 300.552(d).

In meeting this standard, specific notice should be made of the Comments section in the EHA-B regulations. "...it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped student cannot be met in that environment." 34 CFR 300.552(d), Comment.

12. CHANGE IN PLACEMENT

A change in placement occurs when a student is assigned to a different level of alternative program placement as set out in Section 3 of this Subpart or to or from private placement.

13. PLACEMENT OF TRANSFERRING HANDICAPPED STUDENTS

A student who transfers from one school district or other public agency educational program to another shall be temporarily placed in an educational setting which appears to be most suited to the student's needs based on a decision mutually agreed upon by the parent(s) and administrative representatives of the receiving school district or other public agency.

The decision shall be based upon the best information available, which may include a(n):

a. copy of current IEP,
b. copy of cumulative folder contents,
c. report card,
d. oral information from parent or student,
e. observation of district or other public agency representative (See Subpart D, Section 12, IEP of Transferring Handicapped Student, of this Manual).

14. NON-ACADEMIC AND EXTRACURRICULAR SERVICES

In providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, etc., each school district or any other public agency shall ensure that each handicapped student participates with non-handicapped students in those services and activities to the maximum extent appropriate to the needs of that student. 34 CFR 300.306(g).

15. SUPPLEMENTAL INSTRUCTIONAL SERVICES

A school district or any other public agency shall ensure that its handicapped students have available the same supplemental instructional services, including art, music, physical education, industrial arts, consumer and homemaking education, and vocational education, as are available to non-handicapped students. 34 CFR 300.306(b), 300.307(a).

16. RELATED SERVICES

a. Related services shall be provided by each school district or other public agency to all handicapped students based upon each student's IEP. 34 CFR 300.4.

b. "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped student to benefit from special education and includes, but is not limited to, speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, medical services for diagnostic or evaluation purposes, school health services, social work services in schools, and parent counseling and training. 34 CFR 300.13.

c. Each school district or other public agency shall ensure that the hearing aids worn by deaf and hard of hearing students in school are functioning properly. 34 CFR 300.303.

17. FACILITIES, EQUIPMENT AND MATERIALS

a. All facilities which house programs for handicapped students must meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier-free regulations.

b. All instructional or treatment programs for handicapped students shall provide appropriate materials and equipment for implementation of individualized education programs.

Del. Ad. Man. p. 30.

18. LENGTH OF SCHOOL DAY

a. The minimum length of the instructional school day for handicapped students in Kindergarten through grade twelve shall be the same as it is for non-handicapped students in those grades. Such instructional time shall be exclusive of lunch, except at ungraded special schools where the length of a handicapped student's school day may include the lunch period, in whole or in part, when such lunch time activity is specified as an integral part of instruction in the student's IEP. Handbook for Delaware Schools, K-8, p. A-5, and Handbook for Secondary Schools, pp. B-6, C-4.

b. The minimum length of the school day for handicapped pre-Kindergarten children shall approximate that of non-handicapped Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction.

c. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances (e.g., where a child is medically unable to endure the required length of school day), and then only by IEP committee decision after disclosure of the above standards to the student's parent(s).

14 Del. C., §122(b)

19. COMPULSORY ATTENDANCE

Compulsory attendance will be in accordance with 14 Del. C. §§2703 and 2706, and shall apply to exceptional children between the ages of 5 and 16. (Administrators should refer to A Guide to Administration of the School Attendance Program.) Attendance of exceptional children under or over the compulsory school attendance age range, 14 Del. C. §2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations.

20. TRANSPORTATION

a. Transportation of all students to and from school is provided under 14 Del. C., ch. 29.

b. Transportation of handicapped students to and from school or other educational or related service facility shall be administered by the school district of attendance in accordance with existing State and local rules and regulations for pupil transportation.

c. When special transportation needs are indicated in a student IEP, transportation becomes a "related service," and includes:

(1) Travel to and from school and between schools;

(2) Travel in and around school buildings; and

(3) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped student. 34 CFR 300.13(13).

d. Travel to and from school and between schools, including required specialized equipment, shall be at State expense when:

(1) Such travel and/or specialized equipment requirements are specified on the student's IEP;

(2) It is necessary for the implementation of the student's IEP; and

(3) Travel arrangements are made in consultation with the local transportation coordinator when unusual requirements are indicated.

e. Transportation provided to accommodate a related service shall be at local school district or other public agency expense. Transportation incidental to the handicapped student's educational program shall not be at State expense, including, but not limited to:

(1) work-study arrangements;

(2) cooperative work arrangements; and

(3) extracurricular activities; etc.

21. VOCATIONAL EDUCATION

a. When appropriate to educational need, as determined by the IEP Team, each school district or other public agency responsible for the education of a handicapped student shall provide vocational education programs for such students in the Least Restrictive Environment. These vocational programs shall be:

(1) Included as part of the vocational component of the IEP: Education For All Handicapped Children Act, §612(4) and §614(a)(5), Public Law 94-142;

(2) Developed in cooperation with the parent, student, representatives from vocational education, vocational rehabilitation, regular and special education, and other human service agencies, when applicable; and

(3) Provided to handicapped students with equal access to recruitment, enrollment and placement activities. Vocational Education Act Amendments of 1984, §204(a)(2), Public Law 98-524.

b. In addition to the vocational program, each school district or other public agency shall ensure the following support services to assist in vocational training and placement:

(1) Special services, including adaptation of curriculum, instructional equipment, and facilities;

(2) Guidance, counseling and career development staff who are associated with the provision of such special services; and

(3) Counseling services designed to facilitate the transition from school to post-school employment and career opportunities. Vocational Education Act Amendments of 1984, §204(c), PL 98-524.

22. PHYSICAL EDUCATION

a. General.

Physical education shall be made available to every handicapped student receiving a free, appropriate public education.

b. Definition.

"Physical education" is defined as follows:

The term means the development of:

(1) Physical and motor fitness;

(2) Fundamental motor skills and patterns; and

(3) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education, and motor development. 34 CFR 300.14(b)(2).

c. Regular physical education.

Each handicapped student shall be afforded the opportunity to participate in the regular physical education program available to non-handicapped students unless:

(1) The student is enrolled full-time in a separate facility, or

(2) The student needs specially designed physical education, as prescribed in the student's Individualized Education Program.

d. Special physical education.

If specially designed physical education is prescribed in a student's Individualized Education Program, the school district or other public agency responsible for the education of the student shall provide the services directly or make arrangements for such services to be provided through other public or private programs.

e. Education in separate facilities.

The school district or public agency responsible for the education of a handicapped student who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services in compliance with paragraphs (a), and (d) of this section.

34 CFR 300.307.

23. IDENTIFICATION, PLACEMENT, REVIEW, DISMISSAL (IPRD)

a. IPRD is a term used in the State of Delaware. It is a structured process used to ensure that:

(1) Only bona fide handicapped students receive special education funded services;

(2) Handicapped students are appropriately identified;

(3) The nature and severity of handicapping conditions are defined as clearly as possible;

(4) Student IEPs appropriately address the handicapped student's educational needs;

(5) Academic progress is monitored and IEP revisions reflect consideration of the progress;

(6) The education of the handicapped student is provided in the least restrictive environment; and

(7) Students whose handicapping conditions no longer limit academic progress are declassified.

b. As a process, it includes the following interrelated steps:

(1) Identification - a systematic review of clinical and/or educational diagnostic information provided through the multidisciplinary team (MDT) by which the nature and severity of a handicapped condition can be accurately determined.

(2) Placement - a consideration of the educational needs of the student and ultimate assignment to classes, services, or programs necessary to achieve IEP goals and objectives within the least restrictive environment.

(3) Review - a reexamination of a student's educational progress for making changes in IEP goals and objectives consistent with least restrictive environment requirements.

(4) Dismissal - a data-based and/or documented determination by the IEP team that special education and related services are no longer needed for the student to benefit from education.

c. The IPRD process is to be implemented as part of IEP meetings to validate need and assure appropriate services for handicapped students.

G. INTERAGENCY/SPECIAL PROGRAMS

When it is determined by the IEP team that a handicapped student's educational needs cannot be met appropriately in the student's district of residence or through cooperation with other school districts, interagency programs shall be considered within least restrictive environment requirements.

1. INTERAGENCY PROGRAMS

Interagency programs shall be in accordance with the State Plan for the delivery of services to exceptional children. In order to provide a systematic delivery of services, the State Department of Public Instruction shall assist districts or any other public agency in the documentation of the need for services and in the development, implementation, and evaluation of regional or statewide programs.

2. ADMINISTRATIVE AND RELATED SERVICES

Interagency programs at levels IV, V, and VII shall receive the administrative and related services of the district or any other public agency administering the program. An interagency program which provides for one or more categories of exceptional children who need a concentration of expertise, special facilities and/or equipment shall be eligible for administrative and related personnel, pursuant to 14 Del. C. §1703.

3. LOCAL EDUCATION AGENCY (LEA) COOPERATIVE AGREEMENTS

A written Cooperative Agreement shall be developed between the local school district and any other public agency for all programs designed to provide special education and related services for handicapped students.

The following components shall be included in the Cooperative Agreement:

a. The regulatory structure for the delegation and coordination of responsibilities of said agencies participating in the program;

b. The administering district's or other public agency's procedures and policies for:

(1) Student referral, admission, and dismissal;
(2) Continuous student assessment and evaluation;
(3) Maintenance of due process procedures;
(4) Program development, supervision, evaluation, and accountability;
(5) Development and coordination of student transportation; and
(6) Program administration, including intra- and inter-district or agency staff relationships and responsibilities;

c. The participating districts' or public agencies' responsibilities for:

(1) Participation in the student identification, placement, review, and dismissal process;
(2) Efficient and effective transfer of student data;
(3) Orderly transfer of students into the interagency program;
(4) Integration of the student into a less restrictive educational environment upon dismissal from the program; and
(5) Program evaluation.

4. RESPONSIBILITY FOR PLACEMENT IN INTERAGENCY PROGRAMS

a. For initial placement, the responsibility for identification, evaluation, and placement procedures is that of the student's district of residence. In regard to coordination of the identification, evaluation, and placement process, the district or regional supervisor of special education or designee has such responsibilities which include, but are not limited to:

(1) Setting the date, time, and place of all meetings;
(2) Chairing, designating, or agreeing upon a chairperson for all meetings;
(3) Communicating the name of the student to be discussed; the date, and place of meeting to individuals involved;
(4) Receiving all requests for review and appeal; and
(5) Communicating recommendations of staffing to all appropriate staff.

b. When it is suspected the student's need for special education can only be met at Levels V or VII of the continuum of services, an inter-district/interagency conference shall be arranged by the district of residence special education supervisor or designee. All procedures of the regular staff conference shall be followed except that:

(1) Representatives of the inter-district/interagency Cooperative Agreement shall participate in the conference.

(2) The administrator/supervisor of the receiving inter-district or interagency program shall cast the deciding vote if consensus cannot be reached.

(3) The district of residence shall be responsible for participation in the follow-up of students placed in inter-district or interagency programs by reviewing the student's progress in a staff conference conducted no less than once during a calendar year by the inter-district or interagency program.

(4) Arrangements for all evaluation and diagnosis, whether initial or reevaluation, shall be the responsibility of the district of residence of the handicapped student.

5. ELIGIBILITY AND DISMISSAL

When a student fails to meet eligibility criteria for placement in an interagency program, the determination shall be subject to review and appeal process available to all parties involved.

When an IEP team determines that a handicapped student's needs are not being met appropriately in an interagency program, it shall be the responsibility of:

a. the administrator/supervisor of the interagency program to notify the resident district special education supervisor prior to any action on a change of placement;

b. the agency providing direct services to the student to hold an interagency staff conference. The purpose of the conference shall be to resolve the issue in accordance with rules and regulations established by the State Board of Education which govern the provision of a free appropriate education for each handicapped student.

6. SPECIAL PROGRAMS FOR THE VISUALLY IMPAIRED

One resource room program for the visually impaired shall be authorized in each county by the State Board of Education, regardless of the unit count. Services provided to the visually impaired by the Department of Public Instruction, the local school districts and the Division for the Visually Impaired shall be implemented in a Cooperative Agreement and Operational Plan.

7. SPECIAL PROGRAMS FOR THE HEARING IMPAIRED

a. The State Committee for the Hearing Impaired shall be established by the Director of the Delaware Programs for the Hearing Impaired and the Deaf/Blind in conjunction with the State Director of Exceptional Children/Special Programs. The Committee shall consist of the following:

Audiologist:	Sterck School for the Hearing Impaired
Coordinator:	Statewide Services for the Hearing Impaired
Director:	Delaware Programs for the Hearing Impaired
Principal:	Sterck School for the Hearing Impaired
Program Director:	Speech and Hearing Services, Division of Public Health
Psychologist(s):	Sterck School for the Hearing Impaired

Representative(s):	Public and Private Agencies (based upon the meeting agenda)
Representative(s):	Local Education Agency (based upon the meeting agenda)
Representative(s):	Public/Community
Specialist(s):	Professionals skilled in specific, pertinent areas (based upon the meeting agenda)
State Supervisor:	Exceptional Children Programs (responsible for the Programs for the Hearing Impaired)

b. The Chairperson of the Committee shall be the Director of the Delaware Programs for the Hearing Impaired and the Deaf/Blind whose leadership role includes efforts toward Committee consensus. Decisions of the Committee shall be determined by a majority vote of the members present if a consensus is unattainable. The Chairperson shall set the time and place for meetings, which should be scheduled monthly, contingent upon agenda items.

c. The Committee shall provide a means for determining eligibility, program development, and coordination that is unique for the low incidence group of handicapped students whose major handicap is hearing impairment. Specific responsibilities shall include:

(1) reviewing the status of all hearing impaired students in Delaware at the time of initial identification, and periodically as determined by the Committee;

(2) recommending appropriate services and/or programs necessary for hearing impaired students in Delaware. See Subsection I, E, 2, b for the establishment of units;

(3) assisting local educational agencies and appropriate agencies in implementing State Committee recommendations; and

(4) developing and reviewing (annually) for dissemination, policies, and procedures for the conduct of the Committee.

d. The Committee shall discharge its responsibilities in accordance with PL 94-142 and appropriate sections of this Manual. Complete minutes of the Committee meetings shall be sent to the State Director of Exceptional Children/Special Programs.

e. The State Committee for the Hearing Impaired shall constitute a means of additional assurance that Delaware's hearing impaired students will receive adequate attention and appropriate services.

8. SPECIAL PROGRAMS FOR THE DEAF/BLIND

The Margaret S. Sterck School for the Hearing Impaired located in the Christina School District will have administrative responsibility for providing services to the deaf/blind program and shall establish the program management committee in consultation with the State Department of Public Instruction which shall include the Director of the Sterck School, the statewide coordinator of the deaf/blind program, State Department of Public Instruction representative(s), Division for the Visually Impaired representative and persons representing other participating agencies.

9. SPECIAL PROGRAMS FOR THE AUTISTIC

a. The Autistic Program Monitoring Review Board shall be established by the Director of the Statewide Program for Autistic Pupils in conjunction with the State Director of Exceptional Children/Special Programs. The purpose of the Board shall be to review the special education and related services needs and program of each autistic student for whom the Statewide Program for Autistic Pupils is responsible, including those autistic students whose placement in private facilities has been authorized by the State Board of Education, and to make recommendations for program improvement for each autistic pupil. The Board shall consist of the following:

Director:	Statewide Program for Autistic Pupils;
State Supervisor:	Exceptional Children Programs, (responsible for Autistic Programs);
Psychologist:	Autistic Program at Christina School District;
Language Therapist:	Autistic Program at Christina School District;
Representative:	Staff person from each district having a program serving autistic pupils;
Representative:	Local Education Agency (based upon the meeting agenda);
Representative:	Public and Private Agencies (based upon the meeting agenda);
Representative:	Medical/health professional (based upon meeting agenda);
Representative:	Division of Vocational Rehabilitation, based upon meeting agenda);
Representative:	Community-based Habilitation Agency (Private Sector/based upon meeting agenda);
Representative:	Community-based Vocational Agency (Private Sector/based upon meeting agenda);

Representative:	Early Childhood Development Specialist (Private Sector/based upon meeting agenda);
Representative:	Staff person from an in-State or out-of-state program serving Delaware autistic pupils (based upon meeting agenda);
Representative:	Non-voting public representative nominated annually by the Delaware Society for Children and Adults with Autism who does not have a student enrolled in the autistic programs.

(1) The Chairperson of the Board shall be the Director of the Statewide Program for Autistic Pupils whose leadership role includes efforts toward consensus. Decisions of the Board shall be determined by a majority vote of the members present. Four or more members present shall constitute a quorum. Oral or written notice of meeting shall be at least seven days in advance unless unanimous consent shall otherwise permit. The Chairperson shall set mutually agreeable times and places for meetings, which shall be scheduled monthly, contingent upon agenda items.

(2) The Board shall discharge its responsibilities in accordance with PL 94-142 and the Administrative Manual: Programs for Exceptional Children. The Board shall function in an advisory capacity; and procedural safeguards guaranteed to autistic students, their parents, or guardians and to local school districts or agencies shall not be diminished by the activities of the Board. Specific responsibilities include:

(a) Reviewing, at least annually, the identification, evaluation, and educational program and placement of each autistic student and the provision of a free, appropriate public education for autistic students;

(b) Recommending appropriate services and/or programs necessary for autistic students in Delaware;

(c) Recommending to agencies the determination and classification of autism;

(d) Assisting local education agencies and other appropriate agencies in implementing Board recommendations;

(e) Developing and annually reviewing Board policies and procedures;

(f) Recommending solutions to disputes within or between districts or agencies;

(g) Submitting an annual report, that shall not reference an autistic pupil by name, by September 1 of each year to the administering school district and the State Board of Education that shall include the findings and recommendations of the non-voting public representative.

(3) Copies of the minutes of the Board meetings, including recommendations made by the Board, shall be sent to the State Director of Exceptional Children/Special Programs. A copy of pertinent portions of the reviews and recommendations pertaining to the identification, evaluation, and educational program and placement of each autistic student and the provision for a free, appropriate public education to such students shall be sent to the appropriate parents and school district or agency. The IEPs to be in place at the beginning of the school year shall be reviewed in whole day sessions, as necessary, by September 1 of the school calendar year. 14 Del. C. §1332.

b. A Parent Advisory Committee shall be established by each local education agency operating a program for autistic pupils. The function of the Committee shall be to advise the local education agency on matters pertaining to the autistic program. Each Committee shall meet no less than four times each year and must be representative of the age groups of autistic students served. When a local education agency operates a residential program, at least one member of the Committee shall be a parent of an autistic student served in the residential program. 14 Del C. §1332.

c. A Statewide Parent Advisory Committee shall be established whose membership shall consist of one representative elected annually from each Parent Advisory Committee and one member elected annually by the parents of autistic students served in the residential program. The Statewide Parent Advisory Committee shall meet no less than four times each year with the Director of the Statewide Program for Autistic Pupils to advise the Director on matters pertaining to the autistic program. The establishment of bylaws for the Statewide Parent Advisory Committee shall be by vote of all eligible members of the Parent Advisory Committees. A current statewide membership list shall be provided to all parents, surrogate parents, or legal guardians. Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee. 34 CFR 300.650; 14 Del. C. §3111.

d. A Peer Review Committee (PRC) shall be established by the Director of the Statewide Program for Autistic Pupils and the State Director of the Exceptional Children/Special Programs Division in consultation with the Autistic Program Monitoring Review Board. 14 Del. C. §1332.

(1) Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving autistic students.

(2) Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Statewide Program for Autistic Pupils, the Department of Public Instruction, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with autistic pupils.

(3) Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the State Director of Exceptional Children/Special Programs and the Director of the Statewide Program for Autistic Pupils.

e. A Human Rights Committee (HRC) shall be established by the Director of the Statewide Program for Autistic Pupils and the State Director of the Exceptional Children/Special Programs Division in consultation with the Autistic Program Monitoring Review Board.

(1) Purpose: The purpose of the HRC shall be to review the ethical and student rights issues involved in the use of behavior management procedures to ensure their humane and proper application. 14 Del. C. §1332.

(2) Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of students enrolled in the Statewide Program for Autistic Pupils, who are not employees of the Department of Public Instruction, and who are not members of any in-State organization, agency, or program that deals directly with autistic pupils. No member of the HRC shall be a member of the PRC.

(3) Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the State Director of Exceptional Children/Special Programs and the Director of the Statewide Program for Autistic Pupils.

f. Responsibilities of the Peer Review and Human Rights Committees

(1) Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

(a) The PRC shall jointly review with the HRC at least annually the written behavior management procedures submitted by each school serving autistic pupils through the Director of the Statewide Program. The PRC/HRC shall:

(i) issue a written statement indicating which behavior management procedure shall be recommended for use:

(aa) without further PRC/HRC review during the year approved;

(bb) without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be established by the PRC); or

(cc) only with prior case-by-case PRC and HRC (before-the-fact)review;

(ii) recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

(iii) review a school's proposed Emergency Intervention Procedures for autistic students and issue a written statement indicating which Emergency Intervention Procedures shall be recommended:

(aa) for use without after-the-fact reporting to the PRC/HRC; or

(bb) for use with after-the-fact reporting to the PRC/HRC;

(iv) issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle. Notice shall be given to parents of autistic pupils in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures. A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

(b) The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/HRC annual review at least one month prior to the review date. At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

(c) The PRC and HRC shall approve, before-the-fact, the housing of a student under age twelve with a student over age sixteen in a community-based residential program for autistic children operated by a school district designated and approved by the State Board of Education as the administering agency for the Statewide Program for Autistic Pupils. 14 Del. C. §3123.

(d) The PRC and HRC shall review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case-by case review. Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members. Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairpersons to be reviewed within two weeks of submission of the proposal.

(e) The HRC and PRC may have access to the educational records of any autistic pupil for purposes of d.(1) and e.(1) of this section. A quorum of a joint meeting shall consist of a majority of combined membership.

(2) PRC Responsibilities

(a) The PRC shall meet at least every three months to review those behavior management procedures requiring after-the-fact examination. A quorum shall consist of a majority of the Committee. The PRC chairperson shall announce the dates of review at least one month prior to the review date.

(b) The PRC shall meet at least monthly to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. Monthly review shall continue until said procedure has been discontinued or PRC votes otherwise. This review may be held jointly with HRC.

(c) The PRC chairperson shall invite staff members of the Statewide Program for Autistic Pupils responsible for implementation of behavior management procedures, the Director of the

Statewide Program for Autistic Pupils, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

(d) The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for students engaged in behaviors that pose a significant health risk to the student or others, a significant damage to property, and/or a significant reduction of learning.

(e) The PRC shall review and evaluate the training and supervision for the staff who will carry out all behavior management procedures requiring prior, case-by-case review and may evaluate the training of staff carrying out procedures requiring after-the-fact review. The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

(f) The PRC shall keep written minutes of all its meetings and shall submit them to the Program Director, the State Director, Exceptional Children/Special Programs Division and the HRC chairperson. These minutes shall be submitted within two weeks of each meeting. An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Program Director and the HRC chairperson.

(3) HRC Responsibilities

(a) Whenever a school proposes to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure within seven days of the PRC chairperson's notification to the HRC chairperson of PRC's recommendations. A quorum shall consist of a majority of the Committee. This review, however, may be held jointly with the PRC.

(b) The HRC chairperson shall invite staff members of the Statewide Program for Autistic Pupils responsible for the implementation of behavior management procedures, the Program Director, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

(c) The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

(d) The HRC shall keep written minutes of all its meetings and shall submit them to the Program Director, the State Director, Exceptional Children/Special Programs Division, and the PRC chairperson. These minutes shall be submitted within two weeks of each meeting. An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Program Director and the PRC chairperson.

(4) Submission of Proposals for Joint HRC and PRC Review

(a) Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular autistic student, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC. The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date. The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons. The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules. PRC and HRC may request pertinent information needed for the completion of reviews.

(b) After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving autistic pupils shall then submit proposals in accordance with PRC/HRC recommendations.

(c) Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures is indicated in a student's IEP.

(d) Behavior management and emergency intervention procedures that require after the fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

(e) Behavior management procedures that require prior, case-by-case review shall be submitted to the PRC and HRC for joint review prior to implementation. If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal. The proposal shall contain information determined by PRC and HRC and set forth in their operating rules. Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school. If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s). Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations. Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure. Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

(f) Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school. If the procedure is to be modified, informed written consent shall be obtained from the parents.

(g) The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the

procedure. Records shall be kept in an objective, quantitative form, permitting easy evaluation of student data. The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

(h) Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in Subsection f(1)(d), above.

g. Private facilities serving autistic students shall have Peer Review and Human Rights Committee policies as follows:

(1) Private facilities serving autistic students located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

(2) Private facilities serving Delaware autistic students located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located. Said policies shall be reviewed by the Exceptional Children/Special Programs Division of Delaware's Department of Public Instruction to determine that they grant protection substantially equivalent to that provided by Delaware for students prior to any recommendation of approval for private placement by the State Board of Education.

(3) Private facilities serving Delaware autistic students located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by the Exceptional Children/Special Programs Division of Delaware's Department of Public Instruction, in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for students, prior to any recommendation of approval for private placement by the State Board of Education.

(4) Private facilities serving Delaware autistic pupils located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an

order for each Delaware student, shall be deemed to have met the peer review and human rights requirements of this section.

h. Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely an autistic student's educational program, the administrator of the autistic program operated by the local education agency shall contact the parent and request a medication review with the parent and physician.

i. Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of the Statewide Program for Autistic Pupils and the State Director of Exceptional Children/Special Programs.

j. Definition of terms applicable only to special programs for the autistic:

(1) "Behavior Management Procedure" means any procedure used to modify the rate or form of a target behavior.

(2) "Behavior Management Target" means any pupil behavior that either causes or is likely to cause (a) injury to the pupil (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the pupil's actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.), or (e) a significant reduction in the societal acceptability of a pupil (e.g., public masturbation, public disrobing, etc.).

(3) "Emergency Intervention Procedure" means any procedure used to modify unpredictable and dangerous behavior management objectives/targets, e.g., self-injurious behaviors, physical aggression toward others, destruction of property.

(4) "Ethical Use" means the application of a procedure in a manner that is consistent with current community values and protects all of a student's rights.

(5) "Informed Consent" means knowing and voluntary consent by the parent(s) or guardian, based upon a thorough explanation by the program staff member supervising the case-by-case Behavior Management Procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

(6) "Least Restrictive Procedure" means that behavior management procedure which is the least intrusive into,

and least disruptive of, the student's life, and that represents the least departure from normal patterns of living that can be effective in meeting the pupil's educational needs.

(7) "School" means any public school or program (special education or otherwise) which has enrolled a student classified as Autistic.

(8) "Parent" means any parent, surrogate parent or legal guardian.

(9) "Accepted Clinical Practice" means any behavior management procedure or treatment that has been published in refereed (peer-reviewed) journals or similar professional literature.

H. ANNUAL REVIEW

1. ANNUAL REVIEW AND REVISION OF IEP

a. At least annually each school district or other public agency shall initiate and conduct meetings to review each handicapped student's IEP and, if appropriate, revise its provisions. Meetings may be held at any time throughout the school year provided IEPs are in effect at the beginning of, and throughout, the school year. 34 CFR 300.343(d).

b. The review shall be conducted by the IEP team who provide direct services for the student. These personnel are responsible for data collection, review, and, as necessary, revisions in the IEP. Participants in the revision of an IEP shall include those specified under Section I, D, 4.

c. Documentation of the proceedings of each student's annual review shall include those items specified in Section 2 of Subpart D, Content of IEP.

d. Articulation

Articulation is the process by which a student moves from grade to grade or from one organizational level to another, e.g., elementary school to middle school. During the Annual Review, the IEP team shall consider the needs of the handicapped student who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a handicapped student's articulation does not endanger his/her receipt of a free, appropriate public education.

2. DIPLOMAS OR RECORD OF PERFORMANCE

a. Graduation requirements for handicapped students are the same as those for all students. Handicapped students shall be awarded diplomas upon fulfillment of:

(1) the 17 Minimal Performance Requirements in the basic skill areas of Reading, Writing, and Mathematics (Sections C & D, Handbook for Secondary Schools);

(2) the minimum 19-credit and distribution requirement (Section B & D, Handbook for Secondary Schools);

(3) attendance requirements; and

(4) other requirements as established by the local school district or other public agency for non-handicapped students.

b. The methods used for determining that the Minimal Performance Requirements are met shall be specified on the IEP as part of the evaluative criteria and procedures developed for each handicapped student. The teacher, related service providers,

and all members of the IEP Team shall be responsible for determining the extent to which Minimal Performance Requirements are achieved. This group shall ensure that fulfillment of the 17 Minimal Performance Requirements is not used as the sole basis for satisfying the course distribution requirements. Other course content, determined by the district, must be represented.

c. For handicapped students in their senior year, written notice of results of annual IEP reviews are transmitted to building principals who shall be responsible for determining eligibility for graduation.

d. For those handicapped students who are unable to meet the established Minimal Performance Requirements for a diploma, a record of performance shall indicate all accumulated Minimal Performance Requirements acquired by the student and other pertinent information as provided for all students. Handicapped students unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at district expense, through age 20, inclusive.

e. Regardless of the document received by a handicapped student at graduation, whether a diploma or a record of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a handicapped student shall be allowed to participate in graduation exercises without reference to his/her handicap, educational placement or the type of document conferred. 34 CFR 300.306.

I. STUDENT MANAGEMENT AND DISCIPLINE

1. SUSPENSION/EXPULSION

a. Suspension for More than 10 Days or Expulsion

(1) Suspension for more than 10 days, either consecutively or cumulatively, in any one school year, or expulsion for any offense must be considered a change in placement of a handicapped student as defined in this Part, if:

(a) the offense was a manifestation of, or related to, the student's handicapping condition; and/or

(b) the student was inappropriately placed at the time of the offense or there is a likelihood that a change in the student's program and/or placement would alleviate the misconduct which led to the offense. 34 CFR 104.33, 104.36; Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978); Doe. v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979); S-1. v. Turlington, 635 F. 2d 342 (5th Cir.) (Unit B), cert. denied, 454 U.S. 1030 (1981).

(2) Suspensions as set out in paragraph (1) of this Subsection shall include:

(a) in-house suspension for more than 10 days, either consecutively or cumulatively, if it deprives a handicapped student of a significant component of his or her IEP;

(b) suspension or exclusion from transportation, if it results in the handicapped student's absence from school for more than 10 days, either consecutively or cumulatively; and

(c) suspension, exclusion, expulsion, or withdrawal under a behavioral contract pursuant to a student disciplinary code, which is not part of an IEP, if it results in the handicapped student's absence from school for more than 10 days, either consecutively or cumulatively. 34 CFR 104.33, 104.35.

(3) Determination of the relationship of the offense to the student's handicapping condition shall be made by the IEP team. 34 CFR 300.552(2); Stuart v. Nappi. If the student's behavior is determined to meet the conditions set out in subparagraphs (a) or (b) of paragraph (1) of this subsection, then suspension and/or expulsion are not acceptable management or discipline procedures; any discipline for the behavior shall be in accordance with the student's IEP.

(4) Expulsion or suspension for more than 10 days, either consecutively or cumulatively, triggers:

(a) the full range of procedural safeguards delineated in this Manual and State and federal laws and regulations with respect to a change in placement; Stuart v. Nappi; S-1 v. Turlington;

(b) all due process rights accorded all pupils in the district with respect to long-term suspensions or expulsion; and

(c) all such other rights and procedures as are consistent with State and federal law. See: Goss v. Lopez, 419 U.S. 565 (1975); Handbook for Secondary Schools; Handbook for Delaware Schools, K-8.

(5) The student shall remain in his or her educational placement during the pendency of:

(a) proceedings to determine whether the student's behavior is the result of his or her handicapping condition and/or an inappropriate program or placement; or

(b) proceedings to expel or to suspend for more than 10 days where a determination has been made that the student's behavior is the result of his or her handicapping condition and/or inappropriate program or placement.

(6) During the pendency of the above proceedings, the full range of appropriate services within the present placement shall be made available to allow the student to function within that placement. Such efforts shall be documented in the proceedings set out in paragraph (5).

(a) However, in extraordinary cases where the student is a danger to himself or herself, or to others, or is so disruptive that his or her behavior substantially interferes with the right of other students in the class to learn, the district or public agency responsible for the education of the student may place the student in a more restrictive environment, with the assent of the student's parents, or may provide the student with supportive instruction at home in lieu of the student's present educational placement. 34 CFR 300.552(d).

(b) In such extraordinary cases, the district or public agency responsible for the education of the student

shall document:

(i) the behavior of the student,

(ii) the district's or agency's efforts to provide services to allow the student to function within his or her present educational placement, or the futility or lack of success thereof, and

(iii) the rationale for the above decisions.

(c) In such extraordinary cases, the district or public agency responsible for the education of the student shall convene an IEP team meeting within five (5) school days. 34 CFR 300.513.

(d) In cases where a parent objects to such an alternative placement, the provisions of I.K.12.a. shall apply, unless a court order to the contrary is obtained by the district or other public agency. Honig v. Doe, 108 S. Ct. 592, 98 L. Ed. 2d. 686, (1988).

(7) All such instances of suspension, exclusion, expulsion, or withdrawal, and the reasons for such action, shall be documented.

(8) Where a determination has been made by the student's IEP team that the student's behavior is not the result of his or her handicapping condition and/or inappropriate program, the full range of sanctions set out in the student code governing all pupils in the district may be imposed. The school district or other public agency responsible for the education of the handicapped student shall comply with PL 94-142 with respect to the provision of continuing services. See S-1 v. Turlington, 635 F. 2d 342 (5th Cir.) (Unit B), cert. denied, 454 U.S. 1030 (1981); Kaelin v. Grubbs; 682 F. 2d 595 (6th Cir. 1982); Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F. Supp. 279, 297 (E.D. Pa. 1972); Mills v. Board of Education, 348 F. Supp. 866, 874-875 (D.D.C. 1972). Contra Doe v. Maher, 793 F. 2d 1470 (9th Cir. 1986), 557 EHLR 353.

b. Suspension for Less Than Ten Days

All handicapped students suspended for ten days or less shall be accorded the due process rights accorded all pupils in the district with respect to short-term suspensions. Goss v. Lopez, 419 U.S. 565 (1975); Handbook for Secondary Schools; Handbook for Delaware Schools, K-8.

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2. EXCLUSION AS A TREATMENT PROCEDURE

When procedures involving exclusion from class or school are a part of a treatment procedure developed as such by the handicapped student's IEP team with parental consent, the policies as described in Section 1 of this Subpart shall not apply.

3. CORPORAL PUNISHMENT

a. Prior to any proposed administration of corporal punishment to a handicapped student, a determination by the student's IEP team shall be made as to whether or not the misconduct prompting the proposed corporal punishment is related to, or a manifestation of, the student's handicapping condition. Nash County School District, Complaint No. 04-85-1247 (August 12, 1985), 1985-86 EHLR 352: 37-40.

If the student's behavior is determined to meet the conditions set out in subparagraphs (a) or (b) of paragraph (1) of subsection I.I.1.a, above, then any discipline for the behavior shall be in accordance with the student's IEP.

b. If a handicapped student's misconduct is related to, or a manifestation of, the student's handicapping condition, any discipline shall be in accordance with the student's IEP. (See Subsection D, 2, j).

c. If a handicapped student's misconduct is not related to, or a manifestation, of the student's handicapping condition, corporal punishment may be administered in accordance with the same State and other provisions as applied to non-handicapped students in the school district or other public agency. 14 Del. C. §701.

4. WRITTEN NOTICE

The school district or other public agency shall ensure that the parent(s) of each handicapped student receive written notice of the rules and regulations applicable to handicapped students with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school year.

J. EDUCATIONAL SURROGATE PARENTS

An "Educational Surrogate Parent" (hereinafter referred to as "Surrogate Parent") is appointed to represent a student who receives, or may be in need of, special education, under the circumstances set forth in J.1, in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free, appropriate public education to the student. 14 Del. C. §3132; 34 CFR 300.514.

1. DETERMINATION OF STUDENTS REQUIRING SURROGATE PARENTS

a. A surrogate parent shall be appointed by Family Court to represent a student in all matters pertaining to the identification, evaluation, educational placement and the provision of a free, appropriate public education when:

(1) custody has been awarded to the Department of Services for Children, Youth and their Families or other State agency by the Family Court; and

(a) no parent can be identified; or

(b) after reasonable efforts, the whereabouts of the parents cannot be discovered.

Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last known address; or

(c) the parents' whereabouts are known, but the parents are unresponsive to the extent that they are effectively unavailable to represent their child in special education matters. Such determination shall be made by the Family Court of Delaware after documentation has been presented by the district in a hearing for which the parents have been provided proper notice; or

(2) parental rights have been terminated by the Family Court, no guardian has been appointed, and the student has not been adopted; or

(3) the parent of a student in State custody has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revokable by the parent at any time by written notice to the superintendent of the school district in which the student is receiving special education.

b. A surrogate parent is not required for a student who receives, or may be in need of, special education when the student is living in the home of a relative who agrees to act in the place of the parent. See 34 CFR 300.10.

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Revised 2/16/89

2. NOMINATION AND CANDIDACY OF SURROGATE PARENT

a. Nomination of Surrogate Parent

The Department of Public Instruction, Division of Exceptional Children/Special Programs State Director shall be notified in writing of the names of persons who may serve as surrogates by:

(1) school districts or other public agencies;

(2) civic or private organizations; or

(3) volunteers.

b. Screening of Potential Surrogate Parents

Each potential surrogate parent shall be screened by the Department of Public Instruction, Exceptional Children/Special Programs Division, or its designee, to determine that he/she meets candidacy requirements. Each candidate to serve as a surrogate parent shall:

(1) be at least eighteen years of age,

(2) be a resident of the State of Delaware,

(3) be competent to represent the student,

(4) not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the student.

A person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent, 34 CFR 300.514(d)(2);

Foster parents are not considered employees for purposes of this requirement;

(5) have no interest that conflicts with the interest of the student he/she may represent:

Such determination is made on a case-by-case basis. In general, a person would have a conflict of interest if he/she were in a position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free, appropriate public education for the student;

(6) receive instruction about State and federal laws and regulations, due process procedures, handicapping conditions and the availability of programs and services for handicapped students, as provided by the Department

of Public Instruction, Exceptional Children/Special Programs Division, or its designee, 34 CFR 300.514(c)(2)(ii); and

(7) be able to converse in the primary communication mode used by the student, whenever possible.

3. TRAINING FOR SURROGATE PARENTS

a. Initial Training

Initial training for surrogate parents shall be provided by the Department of Public Instruction, Exceptional Children/Special Programs Division, or its designee. Such training sessions shall be conducted at least annually.

b. Follow-up Training

Follow-up training programs shall be provided by the Department of Public Instruction, or its designee, as deemed necessary by the superintendents of the school districts, the Department of Services for Children, Youth and Their Families, the Family Court of the State of Delaware, or the Department of Public Instruction.

c. Certificate of Training

The Department of Public Instruction, Exceptional Children/Special Programs Division, shall issue a Certificate of Training to every person who completes surrogate parent training.

d. Notification of Districts

The Department of Public Instruction, Exceptional Children/Special Programs Division shall notify the appropriate district or other public agency of the availability of surrogate parents who have obtained certificates.

4. APPOINTMENT OF SURROGATE PARENTS

Any person or entity may identify a student believed to require a surrogate parent. This may be done by informing the school district that the student attends or, for a child that is not in attendance, by informing the school district of the child's present residence of the need for a surrogate parent.

a. When a school district or other public agency determines, pursuant to Section 1 of this Subpart, that a handicapped student requires a surrogate parent, the superintendent, or designee, of the school district in which the student will receive or is receiving special education shall, in consultation with the superintendent of the district of

residence of the student, file with the Family Court of Delaware a Petition for Appointment of a Surrogate Parent, after ascertaining that the surrogate parent is willing to serve. For a handicapped student who is receiving special education at agencies of the Department of Services for Children, Youth and Their Families and who meets one of the criteria of Section 1 of this Subpart, the chief administrator of such agency shall notify the superintendent of the school district in which such agency is located of the existence of such student, and the superintendent, or designee, shall file the petition with the Family Court for that student. 34 CFR 300.514(b)(2). The superintendent or designee shall advise the chief administrator of the results of the petition. The district shall be reimbursed by the State Board for the Family Court filing fee.

b. The Family Court of Delaware will review the Petition for Appointment of a Surrogate Parent and either approve or deny the Petition. Approval of the Petition shall be made via the completion of the Petition for Appointment of a Surrogate Parent Order and its transmittal to the requesting superintendent, or designee, of the school district. Appointment of the surrogate shall be effective when the Family Court signs the Order accompanying the Petition. The Petition and Order shall then be transmitted to the requesting superintendent.

c. A person may be appointed to serve as a surrogate parent for more than one handicapped student to the extent that such appointment is consistent with effective representation of the students. In no event shall one person be appointed as a surrogate parent for more than four students.

d. The superintendent of the school district filing such a Petition shall notify the State Director, Exceptional Children/Special Programs Division, of the appointment of a surrogate parent by the Family Court.

5. RESPONSIBILITIES, TENURE, AND COMPENSATION

a. Responsibilities of Surrogate Parent

Each person assigned as a surrogate parent shall represent the handicapped student in all education decision-making processes concerning that student by:

(1) becoming thoroughly acquainted with the student's educational history and other information contained in school records and reports relating to the student's educational needs;

(2) granting or denying permission for initial evaluation or placement, complying with State and federal law as to the confidentiality of all records and information pertaining to the student to which he/she is privy.

including using discretion in necessary sharing of information with appropriate people for the purpose of furthering the interests of the student;

(3) participating in the development of an IEP for the student;

(4) reviewing and evaluating special education programs pertaining to the student and other such programs as may be available;

(5) initiating mediation, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the student, and seeking qualified legal assistance when such assistance is in the best interest of the student;

(6) taking part in training provided to familiarize him/her with State and federal laws and regulations, due process procedures regarding the education of handicapped students, information about handicapping conditions, and the availability of programs and services for such students. 34 CFR 300.514(e); and

(7) submitting to the Department of Public Instruction, Exceptional Children/Special Programs Division, or its designee, semi-annual reports on activities undertaken by the surrogate parent on behalf of the student.

b. Tenure of Surrogate Parents

(1) The tenure or term of service of the surrogate parent shall be:

(a) the length of time which the surrogate parent is willing to serve; or

(b) the length of time the student requires a surrogate parent; or

(c) so long as the qualifications to serve as a surrogate parent are met; or

(d) at the pleasure of the Family Court of Delaware.

(2) Termination of services of a surrogate parent

(a) If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify, in writing, the superintendent of the school district in which the student is receiving special education services at least fifteen days prior to termination of such services.

(b) Involuntary termination of surrogate parent status may be accomplished only by decree of the Family Court after notice and opportunity to be heard. Termination shall only be justified based on material failure of the surrogate parent to discharge his or her duties or maintain confidentiality of information.

c. Compensation for Services as a Surrogate Parent

Surrogate parents shall be reimbursed by the State Board of Education for all reasonable and necessary expenses incurred in pursuit of duties. Reasonable and necessary expenses include, but are not limited to, mileage for attendance at meetings concerning the student being represented, long-distance telephone calls to the school in which the student is being served, and photocopying of the student's records.

6. LIABILITY OF THE SURROGATE PARENT

A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the student.

K. PROCEDURAL SAFEGUARDS

Each school district and other public agency shall adopt and implement procedures which protect the rights of exceptional students, as required by this section.

1. REMEDIES AVAILABLE

a. Relationship to Local Procedures

It is desirable that mutual concerns be discussed and resolved informally by the affected parties and in accordance with local procedures. These informal procedures in no way limit the right to redress through procedures set out in Subsections b. and c. of this Section.

b. Availability of Due Process Hearings

A parent or district or any other public agency responsible for the education of the student may initiate a due process hearing, in accordance with Sections 5 through 11 of this Subpart, where the district or any such public agency:

(1) proposes to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a free, appropriate public education to the student;

(2) refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student;

(3) denies, in whole or in part, a right or entitlement conferred by 14 Del. C., ch. 31.

c. Availability of Administrative Complaint Procedures

A public agency or private individual or organization with an allegation of substance about the actions of any district or any other public agency responsible for the education of a handicapped student which is contrary to the requirements of the Education For All Handicapped Children Act may request the State Education Agency to initiate the procedures set out in Section I, O, 4 to determine compliance.

d. Non-Exclusivity of Remedies

The remedies identified in Subsection b. and c. of this section should not be viewed as exclusive. In certain contexts, other remedies created by law or local district practice may be available, (e.g. Handbook For Delaware Schools K-8; Handbook for Secondary Schools.)

2. OPPORTUNITY TO EXAMINE RECORDS AND EDUCATIONAL PROGRAM

a. The parents of a handicapped student, either personally or through a representative, shall be afforded a reasonable opportunity to inspect and review all relevant records with respect to:

(1) the identification, evaluation, and educational program and placement of the student, and

(2) the provision of a free, appropriate public education to the student. 14 Del. C. §3130 (a); 34 CFR 300.502.

b. The parents shall have the right to obtain copies of all records except the actual evaluation or examination instruments described in Subpart B of Part I of this Manual.

c. Such copies shall be provided without charge, or, at the discretion of the district or State agency, at a fee not to exceed the actual cost of the copies. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review, and copy records. 14 Del. C. § 3130(b).

d. All requests for access to such records shall be made pursuant to Subpart L. of Part I of this Manual. 34 CFR 300.562-300.569.

e. The parents of a handicapped student shall have the right to visit and observe, either personally or through a representative, their child's participation in the current or proposed educational program, provided that the district may require advance notice of such visit. 14 Del. C. § 3130 (c).

3. NOTICE OF CHANGE OR REFUSAL TO CHANGE PLACEMENT

Prior notice is required whenever a district or any other public agency proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free, appropriate public education to the student. Written notice must be sent to parents of handicapped students no less than ten (10) working days before implementation of such action. By mutual agreement between parents and agency, immediate action may be initiated, or action may be postponed.

a. The notice shall include:

(1) A full explanation of all of the procedural due process safeguards available to the parents under State and federal regulations;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or

refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal. 14 Del. C. §3134; 34 CFR 300.505(a).

b. Language of Notice

The notice shall be:

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. 34 CFR 300.505(b).

(3) If the native language or other mode of communication of the parent is not a written language, the district or any other public agency shall take steps to ensure that:

(a) notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) the parent understands the content of the notice; and

(c) there is written evidence that the requirements of Subsections a. and b. of this section have been met. 34 CFR 300.505(c).

c. Subsequent Notification

Notice for reevaluation and continued placement in special education shall be in accordance with Subsections a. and b. of this section. Documentation of attempts to notify the parent(s), by the district or any other public agency, shall be maintained.

4. PARENT CONSENT

a. Parent consent means:

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes the activity and lists the records, if any, which will be released, and to whom they will be released; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked by the parent at any time. 34 CFR 300.500.

b. Parent Consent Required

Parent consent shall be obtained before:

(1) conducting an initial individual student evaluation, and

(2) initially placing a handicapped student in a program providing special education and related services.

Except for initial individual student evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or student. 34 CFR 300.504.

c. Consent Refused

A parent's refusal of consent for initial individual student evaluation or initial placement may be appealed by the district or any other public agency utilizing the hearing procedures found in Sections 5 through 11 of this Subpart. If the hearing panel upholds the district or any other public agency, the agency may evaluate or initially provide special education and related services to the student without the parent's consent, subject to the parent's right to a civil action. 34 CFR 300.504.

5. DUE PROCESS PROCEDURES

a. Initiation of Hearing Procedures

A request for a Due Process Hearing shall be made in writing to the State Superintendent of Public Instruction. The request can be made at any time regarding either a student's identification, evaluation, educational placement, or provision to a student of a free, appropriate public education. 34 CFR 300.504; 300.506.

b. Legal Services

The State Superintendent's response to the request for a hearing shall include a statement that information regarding free or low-cost legal services is available. 14 Del. C. § 3135; 34 CFR 300.506(c).

c. Constitution of the Due Process Hearing Panel

(1) The State Superintendent of Public Instruction shall appoint an impartial hearing panel comprised of:

(a) one attorney, admitted to practice in the State;

(b) one educator who is, or has been, fully certified in the area of special education as a director, supervisor, principal or teacher, or who has been a post-secondary educator in the area of programs for handicapped students; and

(c) a layperson with demonstrated interest in the education of the handicapped included on an approved list compiled by the Governor's Advisory Council for Exceptional Citizens and submitted to the State Superintendent of Public Instruction.

(2) The attorney member shall act as chairperson for the panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must be concurred in by two members of the Due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decision. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.

(3) A Due Process Hearing Panel member:

(a) shall have taken part in training provided to familiarize him/her with State and federal laws and regulations, due process procedures regarding the education of handicapped students, and procedures relative to the conduct of a hearing;

(b) shall not be a member of the State Board of Education, the Department of Public Instruction, or an employee of the district or any other public agency which is involved in the education or care of the student (except that a person who otherwise qualifies as a hearing panel member is not an employee of the agency solely because he or she is paid by the agency to serve in that capacity), CFR 300.507(a)(1); and

(c) shall not be a person having a personal or professional interest which would conflict with his or her objectivity in the hearing. 34 CFR 300.507(a)(2).

14 Del. C. §3137.

6. REGISTRY OF DUE PROCESS HEARING PANEL MEMBERS

The State Director, Exceptional Children/Special Programs Division, Department of Public Instruction, shall keep a list of persons who may serve as Due Process Hearing Panel members. The list must include a statement of the qualifications of each of those persons. Panel members shall be appointed on a rotating basis. 34 CFR 300.507(c).

7. HEARING RIGHTS

a. The hearing panel shall ensure that parents who have requested a hearing have been advised of their procedural rights.

b. The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel and shall be conducted at a time and place which is reasonably convenient to the parties involved.

c. Any party to a hearing has the right to:

(1) be accompanied and advised by counsel or by individuals with special knowledge or training with respect to the problems of handicapped students;

(2) present evidence, confront, cross-examine and compel the attendance of witnesses;

(3) prohibit the introduction at the hearing of:

(a) any evidence that has not been disclosed to the parties at least 5 calendar days before the hearing;

(b) testimony of any witness whose identity has not been disclosed to the parties at least 5 calendar days before the hearing. 34 CFR 300.507(a);

(4) obtain a written or electronic verbatim record of the hearing at public expense. 14 Del. C. § 3131.

(5) receive a written decision which includes the following parts:

(a) statement of issues;

(b) summary of the proceedings;

(c) summary of evidence;

(d) findings of facts;

(e) conclusions of law; and

(f) summary of the issues on which the parties have prevailed.

d. Parents involved in a hearing have the right to:

(1) have the student who is the subject of the hearing present, and

(2) open the hearing to the public. 34 CFR 300.508(b).

e. The district shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) the parent requests the information; and/or

(2) the parent or the district initiates a hearing under Sections 5 through 11 of this subpart. 34 CFR 300.506.

f. Any testimony presented at a hearing authorized by this section shall be under oath of affirmation.

8. ISSUANCE OF SUBPOENAS

a. Authority to issue subpoenas is conferred upon the State Superintendent of Public Instruction, or his designee, in order to implement the hearing process.

(1) Upon application of any party, at least twelve days prior to hearing, a subpoena shall be issued, requiring the attendance of the person or persons listed in the application.

(2) If a person subpoenaed to attend a hearing fails to obey without reasonable cause, or if such a person in attendance refuses, without lawful excuse, to be examined or to answer pertinent questions, an application may be filed with the Family Court for a rule to show cause why such person should not appear or testify. Upon return of the rule, the Court shall examine such person under oath, and if the Court shall determine, after giving such person an opportunity to be heard, that he refuses without legal excuse to attend or testify at the hearing despite the subpoena, the Court may order such person to comply therewith. Any failure to obey the order may be punished as a contempt of the Family Court, pursuant to the Rules of the Family Court.

9. DECISION OF THE DUE PROCESS HEARING PANEL

a. The Due Process Hearing Panel shall reach a final decision, recording of the vote of each panelist, and shall send a copy via certified mail, return receipt requested, to each of the parties or their representatives within 45 calendar days of the receipt of the request for the hearing by the State Superintendent. The Chairperson of the Due Process Hearing Panel shall forward a copy of its final decision to the State Director, Exceptional Children/Special Programs Division, Department of Public Instruction, who shall, after deleting

any personally identifiable information, forward the decision to the Chairperson of the Governor's Advisory Council for Exceptional Citizens. 14 Del. C. § 3136.

b. The Chairperson of the Due Process Hearing Panel shall establish a timeline for the hearing process. The Due Process Hearing Panel may, for good cause or when mutually acceptable to the parties, grant specific extensions of time beyond the 45 day limit at the request of either party; provided, however, that a final decision shall be reached and a copy of the decision mailed to each of the parties within fifteen days of the date for the hearing, or where applicable, within fifteen days of completion of post-hearing argument.

c. The burden of proof and persuasion in any proceeding convened hereunder shall be on the district or State agency which is a party to the proceedings. 14 Del. C. § 3140.

10. FINALITY OF DECISION AND APPEAL

a. A decision made by a Due Process Hearing Panel is final, subject to appeal set out in Subsections b and c.

b. Any party aggrieved by the decision of the Due Process Hearing Panel may file a civil action in the Family Court or Federal District Court. Title 14 Del.C. §3142(a) requires that Family Court civil action in this context be filed within 30 days of the Panel decision.

c. In any action brought under this section, the Court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the Court determines appropriate.

d. On receiving the certification of the Court on appeal, the State Superintendent of Public Instruction, or his designee, shall certify and file with the Court the record of the administrative hearing, which shall include all documents submitted, a transcript of all testimony, and the decision of the hearing panel. 14 Del. C. §§ 3141, 3142.

11. ATTORNEY'S FEES

a. Reserved

12. STUDENT'S STATUS DURING PROCEEDINGS

a. During the pendency of any administrative or judicial proceeding regarding a complaint, unless the district or any other public agency responsible for the education of the student and the parents of the student agree otherwise, the student involved in the complaint shall remain in his or her present educational placement, unless the district or other public agency obtains a court order to the contrary.

b. If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school programs until the completion of all the proceedings. 14 Del. C. §3143; 34 CFR 300.513.

c. The district or public agency responsible for the education of the student is not precluded from using its normal procedures for dealing with students who are endangering themselves or others or who are so disruptive that their behavior substantially interferes with the right of other students in the class to learn.

L. CONFIDENTIALITY OF STUDENT RECORDS

1. ACCESS RIGHTS

a. Each school district or other public agency shall permit parents to inspect and review any education and related records pertaining to their children which are collected, maintained, or used by the agency under this part. The school district or other public agency shall comply with a request without unnecessary delay and before any meeting regarding an Individualized Education Program or hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 days after the request has been made. (See Subpart K, §2, Opportunity to Examine Records and Educational Program.)

b. The right to inspect and review education records under this section includes:

(1) the right to a response from the school district or other public agency to reasonable requests for explanations and interpretations of the records;

(2) the right to request that the school district or other public agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) the right to have a representative of the parent inspect and review the records.

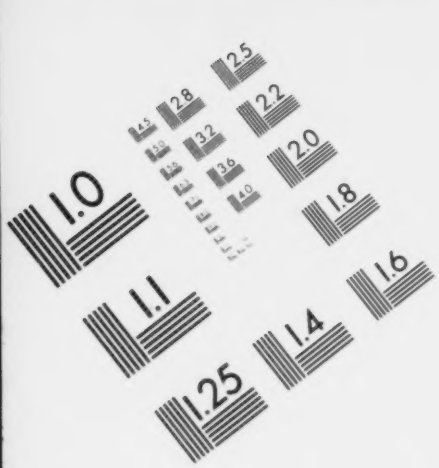
c. A school district or other public agency may presume that the parent has authority to inspect and review records relating to his or her child unless the school district or other public agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. 34 CFR 300.562; 20 U.S.C. 1412(2)(D), 1417(c).

2. RECORD OF ACCESS

Each school district or other public agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the school district or other public agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. 34 CFR 300.563; 20 U.S.C. 1412(2)(D), 1417(c).

3. RECORDS ON MORE THAN ONE CHILD

If any education record includes information on more than one student, the parents of those children shall have the right to inspect and review only the information relating to their child



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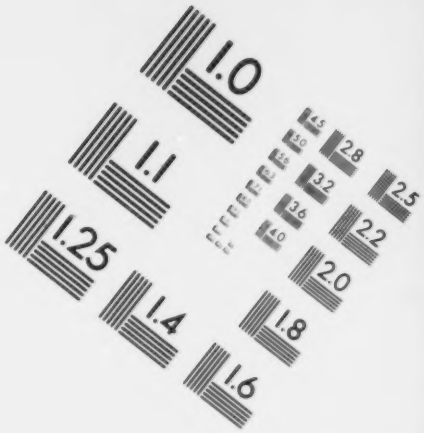

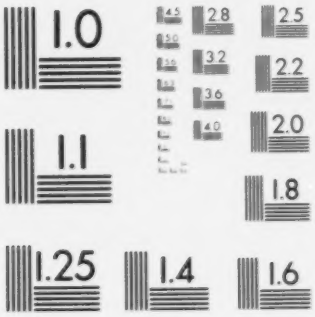

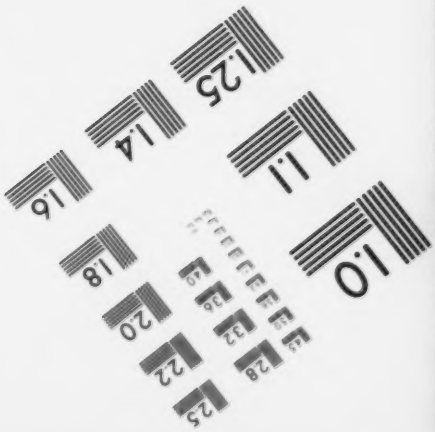

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or to be informed of that specific information. 34 CFR 300.564; 20 U.S.C. 1412(2)(D), 1417(c).

4. LIST OF TYPES AND LOCATIONS OF INFORMATION

Each school district or other public agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. 34 CFR 300.565; 20 U.S.C. 1412(2)(D), 1417(c).

5. FEES

a. A school district or other public agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

b. A school district or other public agency may not charge a fee to search for or to retrieve information under this part. 34 CFR 300.566; 20 U.S.C. 1412(2)(D), 1417(c).

6. AMENDMENT OF RECORDS AT PARENT'S REQUEST

a. A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the student, may request the school district or other public agency which maintains the information to amend the information.

b. The school district or other public agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

c. If the school district or other public agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. 34 CFR 300.567; 20 U.S.C. 1412 (2)(D), 1417(c).

7. OPPORTUNITY FOR A HEARING

The school district or other public agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. 34 CFR 300.568, 20 U.S.C. 1412(2)(D), 1417(c).

8. RESULT OF THE HEARING

a. If, as a result of the hearing, the school district or other public agency decides that the information is inaccurate,

misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, the school district or other public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the student, it shall inform the parent of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the student under this section must:

(1) be maintained by the school district or other public agency as part of the records of the student as long as the record or contested portion is maintained by the agency; and

(2) if the record of the student or the contested portion is disclosed by the school district or other public agency to any party, the explanation must also be disclosed to the party. 34 CFR 300.569; 20 U.S.C. 1412(2)(D); 1417(c).

9. PROCEDURE FOR THE COLLECTION, MAINTENANCE AND DISCLOSURE OF STUDENT DATA

All records kept on a handicapped student must conform with the Procedures for the Collection, Maintenance and Disclosure of Student Data, Handbook for Delaware Schools, K-8, Appendix B; Handbook for Secondary Schools, Appendix A.

M. PRIVATE PLACEMENTS

1. "COMPLEX OR RARE"

a. Private placement with financial aid shall be granted only to a "complex or rare" handicapped person defined as a person in the chronological age group four through twenty years, inclusive, who is found to suffer from two or more of the defined handicaps, or who is so severely afflicted by a single handicap that the total impact of the condition means that he or she cannot benefit from the regularly offered free, appropriate public education programs. 14 Del. C. §3124.

b. Complex or rare handicapped students may be approved for private placement by the State Board of Education when such placement is necessary to provide special education and related services to a handicapped student. 34 CFR 300.400, 300.401.

2. STATE PRIVATE PLACEMENT RESPONSIBILITIES

a. State Board Approval

(1) The State Board of Education shall approve the designation of each student eligible for private placement and the private school or facility in which the approved student is to be enrolled. 14 Del C.§3124.

(2) Such approval of private placement shall be for no more than a one year period, ending no later than June 30 of the fiscal year in which the student is to be enrolled.

b. Criteria for Approval

The Department of Public Instruction shall recommend to the State Board of Education action on referrals for approval of private placement based on the following criteria:

(1) A school district or other public agency program is either not available or is not adequate.

(2) The school district certifies that the student meets the eligibility criteria.

c. State Responsibilities in Private Placement

When a handicapped student is placed in an approved private placement, the Department of Public Instruction shall ensure that:

(1) An IEP which meets all the requirements of this Manual is developed by the referring school district or other

public agency responsible for the education of the handicapped student before the student is referred for approval or placed in a private program. 34 CFR 300.347(a)(1), 300.401.

(2) A representative of the private school or facility has participated in the placement process, either by attending the meeting or by other means of communication, so that the IEP team and the DPI Private Placement Review Committee can make a determination that the private program is appropriate and can fulfill the requirements of the student's IEP. 34 CFR 300.347(a)(2).

(3) Special education and those related services, including transportation, as are required to assist the student to benefit from special education, are at no cost to the parents. 34 CFR 300.13, 300.401(a)(2).

(4) The private school or facility meets State standards as set forth in the Regulations for Approval of Private School Programs for Placement of Persons with Complex or Rare Handicaps. 34 CFR 300.40(a)(3).

(5) Handicapped students in private schools and facilities have all the rights of students served in public school and agency programs. 34 CFR 300.401.

(6) The criteria for placement of a handicapped student in a private program, as certified by the referring school district, have been met.

d. State Responsibility for Private School Accountability

Implementing State and federal regulations governing accountability for and to private programs, the Department of Public Instruction shall:

(1) Monitor compliance through procedures such as written reports, on-site visits and parent questionnaires. 34 CFR 300.402(a).

(2) Develop regulations that define the standards by which private schools and facilities may be approved to serve handicapped students, and a schedule for reevaluation. 14 Del. C. §1221.

(3) Disseminate copies of applicable standards to each private program to which a public agency has referred or placed a handicapped student. 34 CFR 300.402(b).

(4) Provide an opportunity for those private schools or facilities to participate in the development and revision of State Standards which apply to them. 34 CFR 300.402(c).

3. SCHOOL DISTRICT OR OTHER PUBLIC AGENCY RESPONSIBILITY FOR STUDENTS

a. Referral for Private Placement

(1) When a school district or other public agency responsible for the education of a handicapped student is unable to provide an appropriate program, the district or other public agency may refer the student for private placement.

(2) District Certification and Documentation

The local school district certification that the student is eligible for private placement and the statement pertaining to the lack of an appropriate program will be forwarded on the designated forms to the Department of Public Instruction for review prior to State Board of Education action. Documentation shall accompany each application describing the nature and severity of the student's handicapping condition(s). Such documentation shall include report(s) of the appropriate specialist(s), depending upon the nature of the student's handicapping condition(s). Additional documentation will be requested, if needed, in order to make a recommendation as to the student's eligibility for private placement or the appropriateness of the requested placement.

b. Responsibility for Individualized Education Program

(1) The district or any other public agency must develop the initial Individualized Education Program for each handicapped student referred for approval for placement who is in a private school or facility. 34 CFR 300.347(a)(1).

(2) The district or other public agency shall ensure that a representative of the private school or facility attends the meeting. If a representative of the private school cannot attend the meeting, the district shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. 34 CFR 300.347(a)(2).

(3) After a handicapped student enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the district or any other public agency. 34 CFR 300.347(b)(1).

(4) If the private school or facility initiates and conducts these meetings, the district or any other public agency

shall ensure that the parents and a district or any other public agency representative:

(a) are involved in any decision about the student's IEP;

(b) agree to any proposed changes in the program before those changes are implemented. 34 CFR 300.347(b)(2).

c. District of Residence

The referring district and fiscal agent for a student in private placement is the student's district of residence.

d. Responsibility for Compliance

Even if a private school or facility implements a student's IEP, primary responsibility for compliance with State and federal regulations remains with the school district or other public agency responsible for the education of the student.

4. PROCEDURES FOR PLACEMENT OF STUDENTS WITH COMPLEX OR RARE HANDICAPPING CONDITIONS

a. The district IEP Committee shall make a recommendation that it is believed that a student's need for special education and related services cannot be met within the public sector.

b. The chairperson, DPI Private Placement Review Committee, shall be contacted by telephone by the district special education supervisor, and a completed application shall be forwarded to the chairperson within five working days.

c. Within five working days of the receipt of the application, the Committee shall act on the application and the chairperson shall confer in person or by telephone with the district special education supervisor or his/her designee relative to the identification of possible private placements appropriate to the student's needs.

d. Possible placements appropriate for the student shall be discussed by the district special education supervisor and the parents. Upon agreement by the parents, applications for admission shall be submitted to the private facilities by the district special education supervisor.

e. Based upon the acceptances received from the private facilities, the district special education supervisor shall make a recommendation by telephone to the DPI chairperson and forward the written recommendation to the chairperson. Within five working days, the DPI Private Placement Review Committee shall act on the recommendations and the decision of the Committee shall be forwarded in writing to the district superintendent and supervisor of special education.

f. The recommendation of the Private Placement Review Committee for private placement of a student shall be made to the State Board of Education at its next regularly scheduled meeting by the State Director, Exceptional Children/Special Programs Division. The district superintendent and special education supervisor shall be notified in writing by the state superintendent following the action of the State Board of Education.

g. In the event that the student is not accepted for admission to an appropriate private facility, the district supervisor shall notify the DPI chairperson and the chairperson shall continue to assist the supervisor in identifying an appropriate placement or program for the student.

5. FINANCIAL AID FOR PRIVATE PLACEMENT

a. "Financial aid" for handicapped students approved for private placement by the State Board of Education shall include maintenance, transportation and tuition. The amount authorized for payment shall be the amounts charged by the private school or facility for tuition or program costs, transportation and maintenance in accordance with the definitions set forth herein.

b. "Maintenance" shall mean the cost for room and board at a residential school or facility or in a residence approved by the school in which a student is enrolled. Maintenance does not include the cost of medical care or treatment.

c. "Tuition" shall mean payment for instructional services, materials and supplies. Tuition does not include the cost of medical care or treatment.

d. "Transportation" or a reimbursement for transportation expenses actually incurred, will be provided by the State for eligible handicapped students by the most economically feasible means compatible with the student's handicapping conditions, and subject to the limitations in the following regulations:

(1) When the residence of a student receiving tuition assistance for private placement is within sixty miles (one way) of the school or facility attended, the student shall be reimbursed for round trip transportation on a daily basis. Reimbursement will be made at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement.

Round trip mileage is considered to be from the student's residence to the school or facility and return twice a day, or for actual mileage traveled, whichever is less.

Daily transportation reimbursement applies only to non-residential schools.

(2) When the residence of a student receiving tuition assistance for private placement is in excess of sixty miles (one way) but less than one hundred miles (one way) from the school or facility attended, the student shall be reimbursed for round trip transportation on a weekly basis. Reimbursement will be made at the per mile rate allowed by the Internal Revenue Services for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. Scheduled vacations or holidays of the school or facility may also be reimbursed.

Round trip mileage is considered to be from the student's residence to the school or facility and return twice a week. The reimbursement schedule is to be determined by the calendar of the school attended.

For residential schools whose tuition includes room and board for a seven day period, transportation costs will only be reimbursed for one round trip, plus any trips made because the school is closed for vacation or holidays.

(3) When the legal residence of a student receiving tuition assistance for private placement is in excess of one hundred miles (one way) of the school or facility attended, the student shall be reimbursed on the basis of one round trip per year from the student's residence to the school or facility and return. The student may also be reimbursed for travel at such other times when his/her care and maintenance is unavailable due to the closing of the residential facility provided in conjunction with the school or facility. Round trip is considered to be from the student's residence to the school and back to the residence of the student on an annual basis or at such times as indicated above.

6. INDEPENDENT PLACEMENTS

a. District Placements

(1) A school district or other public agency may independently place a handicapped student in a private or public school or facility and provide the tuition from appropriate school district or other agency funds without State Board approval.

(2) Such an independent placement in a private or public out-of-state facility using local funds must nonetheless be certified as a program meeting the applicable standards of the host state.

b. Placement of Students by Parents

(1) If a handicapped student has available a free, appropriate public education and the parents choose to place the student in a private school or facility, the district or any other public agency is not required to pay for the student's education at the private school or facility. However, the district or any other public agency shall make services available to the student as provided in the Part B Plan of the Education of the Handicapped Act.

(2) Disagreements between a parent and a district or any other public agency regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures set out in Sections 5-11 of Subpart K.

N. DELAWARE EDUCATIONAL ASSESSMENT PROGRAM (DEAP)

1. PURPOSE

The purpose of the statewide testing program is twofold - to gather group achievement data for program quality assurance and to provide student performance data useful for diagnosis and placement. When used in conjunction with other testing information, the student data from state testing should assist the IEP team in appropriately identifying individual task/skill strengths and weaknesses.

"Standardized tests represent important measures for determining both student achievement and progress. An assessment program should not be based on a single test nor (should) student promotion or graduation be based on a score derived from that single test. Testing is a valuable tool of instruction and should not be an isolated or single determinant of student performance and progress." State Plan for Goal Directed and Performance Based Instruction, page 11, adopted by State Board of Education, September 20, 1979.

2. PARTICIPATION IN STATEWIDE TESTING PROGRAM

a. All mainstreamed special education students shall be tested. The inclusion of other special education students in statewide testing is encouraged, but shall be at the discretion of their IEP teams.

b. The exclusion of a mainstreamed, special education student from the statewide testing program shall be determined by the IEP team. Reasons for exclusion from testing are listed below:

(1) Students who show a severe emotional or physical over-reaction to the testing situation or who are known to react adversely to testing situations;

(2) Non-English speaking students;

(3) Students with moderate to severe learning disabilities or social/emotional maladjustments; and

(4) Students who have physical handicaps which prevent them from using paper and pencil or from hearing the test administration instructions.

c. Each handicapped student participating in the statewide testing program shall be tested at his/her grade level. There shall be no out-of-level testing for use in the statewide data collection system. In addition, each special education student tested in the statewide program shall test without modifications, such as assistance in recording answers, a revised format, the use of auditory aids, etc. Districts may conduct modified testing for local use, but this data shall not be included in the statewide data collection. Districts which desire such modifications should request technical assistance from the SEA.

d. Answer documents of handicapped students will be coded to distinguish them from those of regular students for supplemental reporting purposes.

3. ACCEPTABLE TESTING ACCOMMODATIONS

The following are testing accommodations that do not invalidate the test norms:

a. Flexible scheduling: The test is administered in shorter sessions or at different time periods from the other students as long as the time limits for each test are adhered to and the total testing program is completed in the prescribed two-week interval.

b. Flexible settings: The test is administered in a different location and/or is administered individually or in a small group by a familiar person or proctor.

c. Partial completion: The student takes only the section(s) of the test which are appropriate.

If a student participates in testing with no more than the above accommodations, the student's results shall be included in the district results.

4. USE OF RESULTS

Group achievement data from the statewide testing are useful in evaluating programs, planning instruction, and identifying curricular and instructional weaknesses. Individual student performance data are useful, when incorporated with other information, in diagnosing pupil strengths and weaknesses and placing students in appropriate instructional groups or programs.

5. DOCUMENTATION

a. Any decision to exclude a mainstreamed, handicapped student from the district data report and the reason for exclusion shall be stated on the student's IEP, at the time of the initial placement and at each annual review.

b. The building principal shall document the exclusion according to procedures specified in the Delaware Educational Assessment Program publication, District Test Coordinator's Manual of Guidelines and Instructions.

O. STATE EDUCATION AGENCY (SEA) RESPONSIBILITIES

1. GENERAL SUPERVISION OF EDUCATION FOR HANDICAPPED STUDENTS

The State Educational Agency (SEA) shall ensure that each educational program for handicapped students administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for handicapped students in the State educational agency; and meets education standards of the State educational agency. 34 CFR 300.600.

Documentation of SEA activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to: General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination, and Finance/Administration.

2. RESPONSIBILITY FOR STUDENTS IN PRIVATE SCHOOLS

a. Students Placed in Private Schools or Facilities by Public Agency

The SEA shall ensure that a handicapped student placed in or referred to a private school or facility:

(1) Is provided special education and related services:

(a) in conformance with an IEP program which meets requirements under I.D. of this Manual;

(b) at no cost to the parents; and

(c) in a school or facility which meets the standards that apply to State and local educational agencies;

(2) Has all of the rights of a handicapped child who is served by a public agency.
34 CFR 300.401

b. The SEA shall ensure that a handicapped student so placed has, in effect, prior to placement, a current valid IEP developed in accordance with requirements under I.D. of this Manual and 34 CFR 300.347, and that a representative of the private school or facility participated in its development. The SEA shall also ensure that, if the private agency or facility conducts meetings to review or revise an IEP, the parents and an agency representative:

(1) are involved in any decision regarding the IEP, and

(2) agree to any proposed changes in the program before those changes are implemented.
34 CFR 300.347

c. Students Placed in Private Schools or Facilities by Parents

If a handicapped student has available a free, appropriate public education and the parents choose to place the student in a private school or facility, neither the SEA nor local school district shall be required to pay for the student's education at the private school or facility. However, the SEA shall ensure that the local school district makes special education and related services available to those students residing within their jurisdiction.
34 CFR 300.403(a)

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under I.K.5. of this Manual.
34 CFR 300.403(b)

d. If a handicapped student is enrolled in a private school or facility and receives special education or related services from a local school district or other public agency, the district or agency shall:

(1) Initiate and conduct meetings to develop, review and revise an IEP for the student in accordance with Subpart I.D. and 34 CFR 300.348; and

(2) Ensure that a representative of the private school or facility participates in the meeting.
34 CFR 300.348

3. SEA COOPERATIVE AGREEMENTS

The Department of Public Instruction shall execute a written cooperative agreement when educational programs are provided in collaboration with other state agency programs to ensure that a free, appropriate public education is provided to all handicapped students who are served by more than one agency. Each cooperative agreement shall be documented, reviewed, and signed by the appropriate agency administrators. The SEA shall ensure that all cooperative agreements are implemented, monitored, and evaluated according to federal and State standards. Each cooperative agreement shall specify the:

a. Title of the agreement;

b. Parties involved and their authority to provide special education and related services;

c. Purpose of the agreement;

d. Roles and responsibilities of each agency;

e. Access to records and transfer procedures;

f. Implementation, dissemination, and training activities;

g. Funding amounts and sources;

h. Compliance monitoring and program evaluation procedures;

i. Reauthorization schedule and negotiation procedures;

j. Signature and title of each agency administrator.

4. COMPLAINT MANAGEMENT PROCEDURES

a. Initiation of Administrative Complaint Management Procedures

When a public agency or private individual or organization makes an allegation of substance about the actions of any district or any other public agency responsible for the education of a handicapped student which is contrary to the requirements of the Education For All Handicapped Children Act, the State Education Agency shall initiate procedures to determine compliance.

b. Any complainant under this section must:

(1) File the complaint in writing with the State Director, Exceptional Children/Special Programs Division, Department of Public Instruction, P.O. Box 1402, Dover, DE 19903.

(2) Include in the complaint the following:

(a) the name of the agency against which the complaint is filed;

(b) the specifics detailing the alleged violation of PL 94-142;

(c) the time frame in which the incident(s) occurred;

(d) a description of any attempts made to resolve the issue(s) prior to filing this action;

(e) name, address, phone number(s) of person(s) filing the complaint and the legal representative, if any;

(f) the signature of the complainant, or his legal representative.

c. Complaints containing the information listed above shall be resolved within 60 days from receipt. A 30-day extension of time requested by the complainant may be granted by the State Director, Exceptional Children/Special Programs Division, for any reasonable circumstance arising with respect to the complaint.

The same extension of time requested by the respondent may be granted by mutual consent of the parties.

d. Following acknowledgment of the complaint to all parties, Exceptional Children/Special Programs Division staff shall interview the complainant and investigate to determine the facts surrounding the complaint. A complaint investigation team shall visit the agency if necessary. The nature and scope of the alleged non-compliance shall be determined, and a report of the findings shall be prepared and sent to the Chief Administrative Officer of the agency, the State Superintendent of Public Instruction, and the complainant.

e. If these findings reveal full compliance, no further action shall be taken.

f. If the findings indicate non-compliance, the following procedures shall be instituted:

(1) The agency shall be presented with the findings and a time frame for corrective action specified by the State Director, Exceptional Children/Special Programs Division.

(2) If the agency agrees with the findings and completes specified corrective action within a time frame specified by the State Director, a follow-up visit by an Exceptional Children/Special Programs Division audit team will be conducted to verify full compliance. A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Superintendent of Public Instruction.

(3) Should the agency disagree with the findings of non-compliance and/or the specified corrective action, a conference may be requested by the State Director, Exceptional Children/Special Programs Division or the Chief Administrative Officer of the agency with the State Superintendent of Public Instruction and/or their designees. The conference agenda shall include a review of issues related to the findings of non-compliance and/or specified corrective action. A record of the conference shall be made.

(4) The State Superintendent of Public Instruction shall render a written decision within 30 calendar days to the Chief Administrative Officer of the agency. The decision shall be based solely on the evidence and

include a summary of evidence and reason for the decision. If the decision indicates non-compliance, corrective action is required, and a time frame for completion shall be specified.

(5) If needed to resolve the dispute, a hearing before the State Board of Education may be held. Such hearings shall be conducted in accordance with relevant provisions of the Delaware Administrative Procedures Act at 29 Del. C., ch. 101. The agency shall receive within a reasonable time a copy of the State Board of Education's decision. The decision shall be based solely upon the evidence. Reason(s) for the decision shall be given.

(a) Should the agency accept the decision of the State Board of Education and agree to complete the specified corrective action within a time frame given, then a follow-up visit by the SEA complaint investigation team shall be conducted to verify full compliance attained.

A report of the findings shall be prepared and sent to the Chief Administrative Officer of the agency and to the State Superintendent of Public Instruction.

(b) Should the agency reject the decision of the State Board of Education and refuse to carry out specified remedies, the State Board of Education shall impose sanctions on that agency. Sanctions may include, but are not limited to, the withholding of federal funds designated for handicapped students.

(c) Any party has the right to request the Secretary of the U.S. Department of Education to review the final decision of the State. Judicial review is available when administrative remedies have been exhausted.

5. SEA COMPLIANCE MONITORING

a. The SEA shall carry out a minimum of four administrative responsibilities regarding monitoring of programs for handicapped students. These responsibilities are:

(1) Adoption and use of policies and procedures to exercise general supervision over all educational programs for handicapped students within the State. 14 Del. C. §122; 34 CFR 300.2, 300.3; 300.134, 300.402, 300.600, 34 CFR 76.772(a)(4).

(2) Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of (i) subgrantees and other agencies providing services to

handicapped students within the State, and (ii) agencies providing services to handicapped Delaware students in other states, with applicable State and federal program operation requirements. 34 CFR 300.402, 300.556, 34 CFR 76.101(3)(i); 76.731, 76.734, 76.772(a).

(3) Adoption and use of a method by which the SEA formally directs that each deficiency identified in program operations (i.e., non-compliance with an applicable State or federal requirement) be corrected by the appropriate agency. 34 CFR 300.556(b)(2), 300.557(b), 300.600(a)(1); 34 CFR 76.701(3)(v), 76.772 (a)(4).

(4) Adoption and use of a method by which the SEA enforces State and federal legal obligations by imposing appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the SEA determines that a local school district or other public agency has failed to comply with any requirement in its approved Local Operational Plan or the Administrative Manual, the SEA shall:

(i) Make no further payments to the district or agency until the SEA is satisfied that there is no longer any failure to comply with the requirement; or

(ii) Consider its decision in its review of any application made by the district or agency for EHA-B payments;

(iii) Or both.

Any school district or other public agency receiving a notice from the SEA under I.O.5.a.(4). above, is subject to public notice provisions as required under 34 CFR 300.592.

34 CFR 300.194, 34 CFR 76.101(3)(i), 76.783

b. Scope of SEA Monitoring Authority

(1) The Exceptional Children/Special Programs Division, acting on behalf of the State Board of Education, has the authority to conduct monitoring, including collection and use of both off-site and on-site information.

(2) The State Superintendent, acting on information provided by the Exceptional Children/Special Programs Division, has the authority to compel the correction of deficiencies identified in program operations.

(3) The State Superintendent, acting upon information provided by the Exceptional Children/Special Programs Division, has the authority to enforce legal obligations.

(4) SEA standards relative to special education and related services are applicable to, and binding upon, all education programs for handicapped students administered within the State.

c. The SEA's method of monitoring shall include:

(1) written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

(2) identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/noncompliance with State and federal requirements;

(3) determination of whether or not each educational program for handicapped students administered within the State, including private schools in which handicapped students are placed by public agencies, meets educational standards of the SEA, the requirements of EHA, Part B, and, where applicable, of Educational General Administrative Requirements (EDGAR);

(4) use of other information provided to the SEA through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

(5) monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the SEA against the agency being monitored;

(6) use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;

(7) written documentation of each monitoring activity through correspondence and reports;

(8) specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative Requirements (EDGAR);

(9) specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing of required corrective actions;

(10) requirement of a written notice (for example, monitoring report, letter of findings) that:

(a) describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

(b) requires that the corrective action plan provide for:

(i) the immediate discontinuance of the violation;
(ii) the prevention of the occurrence of any future violation;
(iii) documentation of the initiation and completion of actions to achieve current and future compliance;
(iv) the time frame for achieving full compliance; and
(v) the description of actions the agency must take to remedy the identified areas of non-compliance;

(11) specification of a reasonable period of time after receiving a corrective action plan from an agency in which the SEA shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

(12) specification of a reasonable period of time from the date of the original written notice, in which the SEA shall determine that:

(a) the agency has submitted an acceptable corrective action plan, which complies fully with all of the requirements; or

(b) reasonable efforts have not resulted in voluntary compliance.

(13) that a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

(a) If the school district or other public agency declines a hearing, the SEA shall reach a final decision of compliance or non-compliance within ten (10) days;

(b) If the SEA conducts a hearing, the SEA shall reach a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

(c) If the SEA reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal requirements); the SEA shall:

(i) make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;

(ii) disapprove any pending school district or other public agency Part B local application, when appropriate;

(iii) seek recovery of funds, and impose any other sanctions authorized by law.

6. COORDINATION OF PROJECTS AND ACTIVITIES

a. Coordination Required

(1) The SEA and each school district or other public agency shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(2) The SEA and each school district or other public agency whose project includes activities to improve the basic skills (reading, mathematics, and effective communication, both written and oral) of students, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(3) The SEA and each school district or other public agency shall continue their coordination activities during the period that they carry out the project. 34 CFR 100b.580.

b. Methods of Coordination

Depending on the objectives and requirements of a project, the SEA and each subgrantee shall use one or more of the following methods of coordination:

(1) Planning the project with organizations and individuals who have similar objectives or concerns;

(2) Sharing information, facilities, staff, services, or other resources;

(3) Engaging in joint activities such as instruction, needs assessment, evaluation, monitoring, technical assistance, or staff training;

(4) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs;

(5) Using the grant or subgrant funds to increase the impact of funds made available under other programs. 34 CFR 100b.581.

7. SEA PROGRAM EVALUATION

a. Responsibilities

The SEA shall carry out six administrative responsibilities in connection with program evaluation, as follows:

(1) develop, adopt, and use procedures for evaluating, at least annually, the effectiveness of programs in meeting the educational needs of handicapped students, including evaluation of IEPs. 34 CFR 300.146;

(2) evaluate the effectiveness of each program in meeting statutory objectives, not less often than once every three years. 34 CFR 76.101(e)(f);

(3) develop and implement a method for correcting the deficiencies identified through program evaluation. 34 CFR 76.101(e)(3)(v);

(4) cooperate in carrying out any evaluation of a program conducted by or for the Secretary of Education or other federal official; 34 CFR 76.101(e)(4).

(5) report to the Secretary of Education the results of required program evaluations, as may be necessary to enable the Secretary to perform his or her duties under the program. 34 CFR 76.101(e)(6)(i);

(6) maintain records of evaluations and afford access to those records as the Secretary may find necessary to carry out his or her duties. 34 CFR 76.101(e)(6)(ii).

b. Evaluation Plan

The SEA shall adopt and implement an annual plan for evaluating the effectiveness of programs in meeting statutory obligations and educational needs of handicapped students, including evaluation of IEPs. The SEA program evaluation plan shall specify:

(1) the individual(s) within the SEA responsible for conducting or coordinating the evaluations;

(2) evaluation questions which address the effectiveness of programs in meeting statutory objectives;

(3) evaluation questions which address the effectiveness of programs in meeting the educational needs of handicapped students, including evaluation of IEPs;

(4) how programs or program components will be selected for evaluation and the number and type of programs to be evaluated;

(5) timelines for planning, implementing, and reporting the evaluation results;

(6) resources for reporting the evaluation information to all involved agencies, State officials, parents, and the general public; and

(7) strategies using evaluation information for policy and resource development aimed at improvement of the programs;

(8) procedures for:

(a) collecting or reviewing program evaluation information to identify deficiencies in meeting federal and State requirements,

(b) requiring correction of identified deficiencies, and

(c) enforcing legal obligations.

c. Cooperation with federal evaluations and reporting to the Secretary

(1) The SEA shall cooperate in carrying out any evaluation of a program conducted by or for the Secretary of Education or other federal official.

(a) Requests received for cooperation in carrying out any evaluation of a program conducted by or for the Secretary of Education or other federal official shall be documented.

(b) Activities conducted in response to such requests shall be documented.

(2) The SEA shall report to the Secretary of Education the results of required program evaluations, as may be necessary to enable the Secretary to perform his or her duties under the program. 76.191 (e)(6)(i). Responses to requests from the Secretary of Education for reports of required program evaluations shall be documented.

(3) The SEA shall maintain records of evaluations and afford access to those records as the Secretary may find necessary to carry out his or her duties. 34 CFR 76.101(e)(6)(ii).

8. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD)

a. The SEA shall implement a Comprehensive System of Personnel Development which includes:

(1) the inservice training of general and special educational instruction, related services, and support personnel. Such inservice training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services, 34 CFR 300.555;

(2) procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

(3) procedures for acquiring and disseminating to teachers and administrators of programs for exceptional children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.

b. The SEA shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of handicapped, parent, and other advocacy organizations in the State which have an interest in the education of handicapped students, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

(1) The SEA shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for exceptional students.

(2) The results of the annual needs assessment shall be used in planning and providing personnel development programs.

c. On-going inservice training programs shall be available to all personnel who are engaged in the education of handicapped students. These programs shall include:

(1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills;

(2) involvement of local staff; and

(3) use of innovative practices which have been found to be effective. 34 CFR 300.380-.387.

9. DISSEMINATION

a. The Exceptional Children/Special Programs Division of the Department of Public Instruction (EC/SP) shall disseminate copies of statutes, regulations, and standards applicable to programs for exceptional students to each local education agency, institution, or organization responsible for carrying out the programs. Such dissemination shall include each private school and facility to which a public agency has referred a handicapped student.

b. The EC/SP Division shall also disseminate information on promising programs and practices which may be of assistance to LEAs and other agencies in improvement of education and related services for exceptional students.

c. The State Director, Division of Exceptional Children/Special Programs, or designee, shall be responsible for all dissemination activities. Methods of dissemination may include:

(1) Notice of any changes in statutes, regulations, or standards applicable to programs for exceptional students shall be issued in writing, with copies to the head of each school district or other public agency and to each supervisor of programs for exceptional students.

(2) Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs.

(3) Annual Leadership Conferences for LEA and other agency staff.

(4) Technical Assistance papers in current areas of critical concern.

(5) Learning Resource System publications relative to current issues and promising practices.

(6) Sharing Best Practices Workshop for administrative and direct service providers held annually and sponsored by the Learning Resource System.

d. All major dissemination efforts shall be documented. Documentation shall include identifying information for the document disseminated, a list of the intended recipients by title and location, and the date upon which dissemination was completed.

e. Periodically, follow-up procedures such as signed receipts and telephone calls will be used to ensure that the intended recipients received the information.

34 CFR 76.101e(3)(iv); 76.301(c)(8)(i)(ii); and 34 CFR 300.384.

10. FINANCE AND ADMINISTRATION

a. Child Count Procedures

The SEA shall specify in writing the procedures and forms used to conduct the annual count of students served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.754 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).

b. Administration of Funds

Funds for the education of handicapped students shall be administered pursuant to Title 14 of the Delaware Code.

c. Review of LEA Applications

(1) The SEA shall develop and use a review sheet to document that all required EHA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.

(2) Each LEA shall be notified in writing, using a standard format, of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved.

(3) All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.

(4) In the event that the SEA and the LEA cannot negotiate and effect an approved LEA Application, the SEA shall notify the LEA in writing of its right to a hearing and the procedures for obtaining a hearing.

(5) Other SEA Responsibilities

(a) Child Identification, Location and Evaluation

The SEA shall ensure that all handicapped students are identified, located and evaluated, including children in all public and private agencies and institutions in the State, 34 CFR 300.128, by:

(i) providing notice which is adequate to fully inform parents about the requirements for the annual program plan, including:

(aa) a description of the extent to which the notice is given in the native languages of the various population groups in the State;

(bb) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(cc) a summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(dd) a description of all of the rights of parents and children regarding this information, including the rights under Section 438 of the General Education Provisions Act and Part 99 of the Family Educational Rights and Privacy Act of 1974, and implementing regulations.

(ii) publishing the notice or announcing it in newspapers or other media, or both, with circulation adequate to notify parents throughout the State prior to major identification, location or evaluation activities. 34 CFR 300.561.

(b) The SEA shall ensure that the State interagency committees function as set forth in Subpart I.G. for:

- Visually Impaired (I.G.f)
- Hearing Impaired (I.G.g.)
- Deaf-Blind (I.G.h.)
- Autistic (I.G.i)

(c) The SEA shall ensure that students have the transition support set forth in Subpart I.H.3.

(d) The SEA shall develop an interagency agreement with the Family Court regarding notification of school districts or other public agencies about termination of parental rights.

(e) The SEA shall implement the requirements for surrogate parent screening and training as set forth in Subpart I.J.3 and I.J.4.

(f) The SEA shall establish and maintain procedures to ensure the procedural safeguards in Subpart I.K. 5 through 12.

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P. GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS

1. GENERAL

There shall exist an Advisory Council for Exceptional Citizens, appointed by the Governor, to act in an advisory capacity to the State Board of Education and other State agencies on the needs of exceptional citizens. The General Assembly provides for the maintenance of the Council. The Council also serves in the capacity of the Advisory Panel as required by PL 94-142. 14 Del. C. §3111.

2. MEETINGS

In fulfilling its function as the Advisory Panel as required by PL 94-142, the Governor's Advisory Council shall meet as often as necessary to conduct its business. 34 CFR 300.653.

Official minutes must be kept on all Panel meetings and shall be made available to the public on request. All Advisory Panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public. Interpreters and other necessary services must be provided at Panel meetings for Panel members or participants. 34 CFR 300.653.

3. ANNUAL REPORT

By July 1 of each year, the Governor's Advisory Council shall submit an annual report of Panel activities and suggestions to the SEA. This report shall be made available to the public in a manner consistent with other public reporting requirements under this part. The report shall be reviewed by the staff of the SEA, and SEA staff will communicate with the Governor's Advisory Council relative to their response to the report. 34 CFR 300.653.

4. REIMBURSEMENT

The Advisory Panel shall serve without compensation, but the State must reimburse the Panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use Part B funds for this purpose. 34 CFR 300.653.

Q. FUNDING

Special education units shall be used for the expressed purposes of programming for exceptional children and be consistent with the formula described in Section 1703, Chapter 31 of Title 14 of the Delaware Code, and the provisions of this section. Units generated by children in a program involving two or more agencies shall be used exclusively for such children.

1. REIMBURSEMENT UNDER THE UNIT SYSTEM

Eligibility of the local educational agencies to receive reimbursement under the unit system is contingent upon:

a. the proper identification of exceptional children in accordance with Title 14 of the Delaware Code and Section E of this Manual; and

b. a State Department of Public Instruction audit to document the student count for units awarded on September 30, and to document the availability of current and complete IEPs for students included in the count.

2. TEACHER/UNIT STRUCTURE

Teacher/unit ratios shall be computed according to the following schedule:

HANDICAPPING CONDITION	PUPILS PER UNIT*
Educable Mentally Handicapped	15
Socially/Emotionally Maladjusted	10
Partially Sighted	10
Intensive Learning Center Pupils	8.6
Learning Disabled	8
Blind	8
Trainable Mentally Handicapped	6
Severely Mentally Handicapped	6
Hearing Impaired	6
Orthopedically Handicapped	6
Autistic	4
Deaf/Blind	4

*Pupils per unit is given in Full-Time Equivalents. A district qualifies for the first unit and subsequent units based on a major fraction of pupils.

14 Del. C. §1703.

3. INTERAGENCY PROGRAM

An interagency program which provides for one or more categories of exceptional children who need a concentration of expertise, special facilities and/or equipment shall be eligible for administrative and related personnel as follows:

a. A principal trained in special education shall be employed in any special school with 15 or more units. 14 Del. C. §1307.

b. Teaching units shall be allocated in accordance with 14 Del. C. §1703.

c. When determining the type of administrative and support personnel eligible for a special school, (except for physical therapists, occupational therapists and speech therapists), the units shall be counted without regard to the handicap that each represents.

d. Any school district having classes for the trainable mentally handicapped, severely mentally handicapped, the orthopedically handicapped, the autistic, the partially deaf or hard of hearing, partially sighted, or the deaf/blind as provided in 14 Del. C. §1703, may employ teachers, attendants or aides as required, subject to the qualifications promulgated by the State Board of Education. (14 Del. C. §1324) All paraprofessionals in such programs must work under the direct supervision of teachers.

(1) Trainable Mentally Handicapped Unit -- One classroom teacher, or in lieu of a teacher, two aides may be employed as long as the number of aides does not exceed the number of teachers in any given special school, and that all aides work under the direct supervision of teachers. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

(2) Severely Mentally Handicapped Unit -- One classroom teacher and one classroom aide may be employed per unit in any given special school. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. All aides shall work under the direct supervision of teachers. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

(3) Autistic Unit -- One teacher and one aide may be employed per unit. such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

(4) Orthopedically Handicapped Unit -- One classroom teacher and either one aide or attendant may be employed per unit in any given special school.

(5) Hearing Impaired Unit -- One classroom teacher and one aide per primary unit, one classroom teacher and one aide for other units (grades 4-12), and one clerk-aide for the parent-child program may be employed in any given special school.

(6) Deaf/Blind Unit -- One classroom teacher and one classroom aide may be employed per unit. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred and twenty-two (222) days.

(7) Intensive Learning Center Unit -- One classroom teacher, or, in lieu of a teacher, two aides may be employed as long as the number of aides does not exceed the number of teachers in any center, and that all aides work under the direct supervision of teachers.

(8) The use and ratio of aides/attendants to teachers shall be dependent upon the rationale developed in the agency operational plan(s).

e. A nurse shall be employed for eight (8) or more units of autistic, orthopedically handicapped, trainable mentally handicapped, severely mentally handicapped or a combination thereof and for the hearing impaired as per regular district formula, i.e., 40:1.

f. Any special school with an enrollment of ten (10) or more units may employ a secretary (12 months) and proportional secretarial services for less than 10 units. Such units must be subtracted from the district's total units so that they are not counted twice.

g. Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care in accordance with Section 1311, Title 14, and the Handbook of Personnel Administration for Delaware School Districts.

h. An instructional media specialist shall be assigned to the school for the hearing impaired when there are a minimum of ten (10) units.

i. A budget item shall be provided for contractual services in order to give to a school for hearing impaired the appropriate services in such fields as, but not limited to, speech pathology, school psychology, social work, and guidance counseling.

j. Whenever the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf/blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, a principal for eight (8) or more such units of deaf/blind children. If a principal is assigned responsibility for such a program for fewer than eight (8) units, the support for that assignment shall be in the same ratio as the number of authorized units is to eight (8) units.

4. RELATED SERVICES STAFF/UNIT STRUCTURE

Related services staff/unit ratios shall be computed according to the following schedule:

RELATED SERVICES STAFF	FORMULA
Related Services Specialists**	1-30 special education units (except SMH, Hearing Impaired, Autistic, Deaf/Blind, or Orthopedically Handicapped)
Physical Therapists**	1-50 SMH pupils and/or 1-30 Orthopedically Handicapped
Occupational Therapists**	1-50 SMH pupils and/or 1-40 Orthopedically Handicapped
Speech and Hearing*	1-140 Units
Speech Therapists**	1-50 SMH pupils
Speech Therapists***	1-6 units Hearing Impaired
Speech/Language Clinicians**	1-50 Orthopedically Handicapped
Speech/Language Therapists**	1-3 units Autistic pupils
Therapists and Special Service Personnel**	1/3 specialist per each unit Deaf/Blind pupils
Psychologists*	1-150 units and/or
Psychologists**	1-6 units Autistic pupils
Psychologists***	1-10 units Hearing Impaired

Resource Teachers***	1-10 units Hearing Impaired
Instructional Media Specialists	1-10 units Hearing Impaired
Interpreter-Tutor***	1-4 Deaf pupils who are mainstreamed

* or fractional part of first unit.
** districts qualify for fractional part of unit.
*** Sterck School only.

5. RELATED SERVICES UNIT

a. "Related Services Unit" is defined for funding purposes as 1 funding unit for each 30 units of certain handicapped children identified and served in a school district, grades K through 12, excluding units for enrollees identified as Autistic, Severely Mentally Handicapped, Deaf/Blind, Hearing Impaired and Orthopedically Handicapped. Districts shall qualify for partial funding for a related services unit for a fractional part of 30 units.

b. Funding authorized by this section shall be used to supplement regular school programs for handicapped pupils, and may provide for the assignment of 180 pupil days and 185 employment days described in 14 Del. C. §1305(c), to be assigned during any of the months of a 12-month fiscal year beginning July 1.

c. Any school district wishing to use funds under any of the options set forth in this section shall make application to the State Board of Education for that use. The application shall indicate that these funds are being used to supplement programs in the school district and that their use will not supplant personnel, services, supplies, or materials provided from local funding sources.

d. Other conditions pertain.

14 Del. C. §1716-A

6. VARIANCE

Funds appropriated for the purpose of funding the units of pupils under the provisions of paragraphs d, e, f and k of Section 1703, Chapter 31 of Title 14 of the Delaware Code, shall not be expended for any other purpose. However, such appropriate funds may be used for directly related educational projects and/or programs if approved by the State Board of Education. 14 Del. C. § 1703(n).

7. TUITION CHARGES

Tuition charges are applicable in accordance with Sections 601-606, Chapter 31 of Title 14 of the Delaware Code.

II. GIFTED AND TALENTED STUDENTS

ELIGIBILITY

1. IDENTIFICATION

"Gifted or talented person" means a person in the chronological age group four through twenty years inclusive, who by virtue of certain outstanding abilities is capable of high performance in an identified field. Such an individual, identified by professionally qualified persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to realize his or her full contribution to self and society. A person capable of high performance as herein defined includes one with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

a. general intellectual ability;

b. specific academic aptitude;

c. creative or productive thinking;

d. leadership ability;

e. visual and performing arts ability;

f. psychomotor ability. 14 Del. C §3101(3).

2. PROGRAM PLACEMENT

Gifted or talented students who have become four years of age on or before September 1 may be admitted for educational placement at the beginning of the school year in September providing:

a. Application has been made to the superintendent of the district in which the student resides. Such application shall be completed before April 1 whereupon arrangements will be made for testing of the student applicant.

b. The student is identified as gifted or talented according to the guidelines contained in the Program Standards for Gifted and Talented Education in the State of Delaware.

3. FUNDING

a. "Gifted or Talented Unit" is defined for funding purposes as one funding unit for each 600 enrollees in a school district, grades K through 12, excluding enrollees counted in certified units for handicapped persons. Districts shall qualify for partial funding for a gifted or talented unit for a fractional part of 600 authorized pupils enrolled.*

*(current funding is at 1200 pupils per unit).

b. Each pupil may be counted only once in a district or districts. For pupils who attend schools in more than one district during each school day, the pupil is to be counted in each school district for the portion of the day that he or she is in attendance there.

c. Funds appropriated in support of this unit may be used for expenditures under Division I or Division II for the purchase of services from persons or agencies or for the purchase of supplies to be used in the teaching of the gifted or talented pupils only, upon the decision of a school district board of education to use the funds for that purpose in substitution for the employment of a teacher.

d. Other conditions pertain.

14 Del. C. §1716-B

DEFINITION OF TERMS

ANNUAL PLAN

The State of Delaware Annual Plan is designed to be the State guide for the development and support of special education programs in the State. The plan shall be inclusive of:

- State Rules and Regulations for Programs for Exceptional Children
- Various guidelines for use of State and federal funds for program development

ARTICULATION DISORDER

Relevant to speech and language pathology, this is a motor speech impairment characterized by sound omissions, distortions, and/or substitutions which are not appropriate for the student's developmental age. Articulation differences which are due to temporary physical disability, dialectical or cultural differences are not considered impairment.

CHILD

A child is anyone in the State of Delaware who has not yet attained the age of 18. See 1 Del. C. §701.

CONTINUUM OF ALTERNATIVE PROGRAM PLACEMENTS

The administrative placement alternatives which range from the least restrictive (regular classroom) to the most restrictive (residential school and treatment center) and provide for the education of each exceptional child in an alternative best suited to the child's need. The word "continuum" should not be construed to be hierarchical, discriminatory, or judgmental as to the value or related restrictiveness of any one environment. All placements in the continuum are in public facilities. (See pp. 24-28).

COOPERATIVE DISTRICT PROGRAMS

When the IEP team determines that a handicapped student's educational needs cannot be met appropriately in the student's district of residence, the district may enter into a cooperative arrangement with one or more other school districts. Such cooperative arrangements shall be for the purpose of providing a free, appropriate public education for the student, within the least restrictive environment.

DISTRICT OR OTHER PUBLIC AGENCY

The term "district or other public agency" includes the State education agency, local education agencies, special schools, and any other political subdivisions of the State which are responsible for providing education for handicapped students.

DISTRICT OR OTHER PUBLIC AGENCY PLAN

That document prepared by each school district and any other public agency responsible for the education of handicapped students to detail the implementation of their comprehensive program of special education. The plan shall be inclusive of:

- Local procedures for implementing State rules and regulations
- Annual program plans including procedures for utilization of various Federal, State, and local resources

DROP-OUT

Voluntary on the part of the student. Non-attendance for a period of time sufficient to invoke local procedures to delete student from school roll.

DYSFLUENCY

Relevant to speech and language pathology, this is a disturbance in the normal flow or time patterning of speech. It may describe developmental hesitations, or refer to a dysrhythmic speech pattern. The source of dysfluency may be at the neurological, respiratory, phonatory, or articulatory level and may be characterized by one or more of the following: audible or silent blocking; sound/syllable/word repetition; sound prolongations; interjections; broken words, circumlocutions, and/or words produced with an excess of tension. These characteristics may be accompanied by associated or secondary characteristics such as eye blinks, head jerking, or facial tics.

EXCEPTIONAL PERSONS

A handicapped person or a gifted and talented person as defined in Chapter 31, Title 14 of the Delaware Code.

EXCLUSION

Involuntary on the part of the student. A treatment procedure implemented by an IEP team to remove a student from particular classes or school, but does not terminate district responsibility to provide a free, appropriate public education.

EXPULSION

Involuntary on the part of the student. An administrative procedure implemented by a local board of education to remove a student from school and indefinite termination of district responsibilities to provide a free, appropriate public education.

FREE APPROPRIATE PUBLIC EDUCATION

Special education that is specially designed instruction including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services as defined by State Board of Education rules and regulations and as may be required to assist a handicapped person to benefit from an education that:

1. is provided at public expense, under public supervision and direction, and without charge in the public school system;

2. meets the standards of the State Board of Education as set forth in 14 Del. C., ch. 31, or in the rules and regulations of the Board; and

3. includes elementary, secondary, or vocational education in the State; and

4. is individualized to meet the unique needs of the handicapped person.

The related services to be provided shall be based upon a program for each child as approved by the State Board of Education.

GIFTED OR TALENTED PERSON

A "gifted or talented person" means a person in the chronological age group 4 through 20 years, inclusive, who by virtue of certain outstanding abilities is capable of a high performance in an identified field. Such an individual, identified by professionally qualified persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to realize his or her full contribution to self and society. A person capable of high performance as herein defined includes one with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

1. General intellectual ability

2. Specific academic aptitude

3. Creative or productive thinking

4. Leadership ability

5. Visual and performing arts ability

6. Psychomotor ability

A "gifted or talented person" may also be referred to as a "gifted or talented student." (See "Student".)

GUIDELINES

Documents intended to facilitate the implementation of standards, but which are recommendations only and do not have the effect of law.

HANDICAPPED PERSON

"Handicapped Person" means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon handicapping condition) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the State Board of Education, requires special educational services in order to develop his or her capabilities. A "handicapped person" may also be referred to as a "handicapped student." (See "Student".)

INDIVIDUALIZED EDUCATION PROGRAM (I.E.P.)

A written specification of what instructional and related services will be provided to a student so that his unique educational needs will be met. (See text of Manual, pp 11-12, for content).

INDIVIDUALIZED EDUCATION PROGRAM MEETING

A formal conference for developing, reviewing and/or revising a student's individualized education program.

INSTRUCTIONAL PROGRAM

Those activities which provide the principal elements of an educational program for exceptional children and youth including special education and related services.

LANGUAGE DISORDER

Relevant to speech and language pathology, this is the inadequate or inappropriate acquisition, comprehension or expression of the student's primary language or dialect in one or more of the following areas: language content (semantics), structure (morphology, syntax and phonology), usage (verbal expression, written expression and non-verbal communication), and/or auditory or linguistic process (auditory or linguistic discrimination, perception, and sequencing). A student who

does not speak standard English as a primary language or dialect is considered to have a language difference, not disorder, if primary language skills meet age and cultural expectations. Care is to be exercised when classifying the latter.

LEAST RESTRICTIVE ENVIRONMENT

(Operational definition in text of Manual - see I., F., Section 1.

NOTIFICATION

Terms such as "notice and notification" mean (1) written statements in the primary language of the child's home, and (2) if necessary, oral communication in the primary language of the home.

PARENT

The term "parent" includes a mother or father, a person acting as a parent of a child, (e.g., a grandmother or step-parent with whom a child lives), as well as persons who are legally responsible for a child's welfare, (e.g., guardians). "Parent" also means a surrogate parent who has been appointed by the Family Court to act as such. The term does not include the State if the child is a ward of the State.

PHYSICAL EDUCATION

Physical education is the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports. The term includes special physical education, adapted physical education, and motor development.

PRAGMATICS

Relevant to speech and language pathology, this pertains to the parameters governing the use of language in a social context. It incorporates communication intentions and conversational devices in the context of the communication environment. Some parameters include: intentions (greetings, requesting, responding, closing), conversational devices (turn-taking, topic maintenance, changing topics, clarifying, attending to speaker), and social context (different communication partners, different social communication environments).

PROGRESSION

The expected movement of a student in achievement from one instructional unit to the next, or from one grade level to the next.

QUALIFIED

"Qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

REGULAR EDUCATION

That part of a comprehensive continuum of services generally offered by the local school district to the majority of its students in the least restrictive of a variety of educational alternatives.

RELATED SERVICE

A non-instructional service which must:

a. be provided during the school day in order to be effective; and

b. be an integral part of an educational objective of the IEP, district or other public agency.

In addition, the service would not be provided in the same fashion, or at all, if the student were not attending school.

For example, "related service" includes transportation, developmental, corrective and other supportive services as are required to assist a handicapped child to benefit from special education. Such services include, but are not limited to, speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. (See pp. 29-30.)

RULES AND REGULATIONS

All policies, procedures and requirements essential to the implementation of programs and services for exceptional students duly adopted by the district or other public agency, State Education Agency (SEA), or a federal agency in accordance with the Delaware and federal Codes.

SPECIAL EDUCATION

"Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped student, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

SPECIAL SCHOOL OR PROGRAM

An educational facility or program which is established and approved by the State Board of Education in cooperation with the Local Board of Education or other public agency to serve handicapped children who need intensive special education requiring a concentration of expertise, special facilities or equipment.

SPECIAL TRANSPORTATION

Those transportation services which are required because of the student's exceptional characteristics or the location of the special education program.

SPECIALISTS

Those professional special education or related services personnel who meet either the certification or approved requirements of the State Board of Education or other State agency as applicable, such as, but not limited to, psychologists, social workers, speech therapists and special education supervisors or directors.

STANDARDS

1. Predetermined levels of academic achievement or social deportment.

2. Policies, procedures, rules, regulations and other written documents that have the effect of law.

STUDENT

The word "student" is used in this Manual to designate all those persons covered by the specific Part of the Manual in which the word is being used. Thus, the word "student" in Part I of this Manual refers to all handicapped persons covered by that Part, and the word "student" in Part II of this Manual refers to all gifted and talented persons covered by that Part.

EDUCATIONAL SURROGATE PARENT

An individual appointed by the Family Court of the State of Delaware to safeguard a child's rights in the specific instance of educational decision making.

TRANSFER

The movement of a student from one school district or other public or private agency to another where primary responsibility for education and related services shifts to the receiving school district or other public agency.

TRAUMATIC BRAIN INJURY (TBI)

A traumatically induced head injury which results in neurologic damage. The complex array of resulting disabilities most often cannot be singularly factored out because they interact as a function of medical, physical, neurological, psychological, social and/or pre-morbid determinants. Individuals with TBI may exhibit physical, cognitive, behavioral, speech and/or psycho-social impairments. Because TBI may manifest itself in varying degrees and combinations of disability, school-age children so afflicted shall be identified and served under one or more of the existing categories of handicapping conditions.

VOCATIONAL EDUCATION

"Vocational education" is organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

VOICE DISORDER

Relevant to speech and language pathology, this is a condition in which pitch, intensity, quality or resonance interferes with communication, draws unfavorable attention, adversely affects the speaker or the listener, and/or is inappropriate to the age or sex of the individual. Treatment of any voice disorder is to proceed only with the approval of a licensed physician.

WITHDRAWAL

Voluntary on the part of the student. A documented removal of a student from school initiated by the student or parent, with no known intent to continue formal education.

APPENDIX A

UPDATE SUBSCRIPTION FORM
ADMINISTRATIVE MANUAL: PROGRAMS FOR EXCEPTIONAL CHILDREN

APPENDIX A

UPDATE SUBSCRIPTION FORM
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Exceptional Children/Special Programs Division
Delaware State Dept. of Public Instruction
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Dover, DE 19903

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APPENDIX B

IDENTIFICATION PROCEDURES FOR DETERMINATION OF A LEARNING DISABILITY

Identification Procedures for Determination of a Learning Disability

When identifying students with learning disabilities, inquiry shall be made by the MDT into each of the following major areas:

1. Inability to succeed in a regular education placement as documented by significantly below grade level performance in those subjects for which regular education standards exist which define promotion from grade to grade.

2. Intellectual functioning level as determined by an evaluation specialist specifically trained in the assessment and interpretation of intelligence tests, such as a school psychologist. The measurement of intellectual functioning shall include an individually administered test of intelligence which is highly reliable and valid for the student being tested. Group measures, unjustified prorated scores, and abbreviated forms of intelligence tests shall not be used.

3. Academic achievement level as assessed by a norm-referenced test. Criterion-referenced tests, curriculum-based assessments, informal measures, student work samples, and the student's educational history may be used to corroborate norm-referenced test scores.

4. A severe discrepancy between current achievement level and expected achievement level as documented by the MDT. The establishment of a severe discrepancy shall take into account the correlation between intellectual and achievement levels, as well as regression to the mean. Table 1 below shall be applied for this purpose, utilizing the following steps:

   Step 1: Determine the correlation between the intellectual and achievement measures. Correlations between intelligence tests and achievement tests are generally available in the research literature. Table 2 below lists some of the possible correlations which may be applied to calculate ability-achievement discrepancies. MDTs are under no obligation to use these correlations, and may prefer to use other values based on more recent research, provided that such values are obtained using samples that are reasonably representative by age and score distribution.

   For example, Table 2 shows that the approximate correlation between the Wechsler Intelligence Scale for Children-Revised Full Scale IQ and the Written Language and Knowledge Cluster in the Woodcock-Johnson Tests of Achievement as .68. If the correlation between intellectual and achievement measures is not known, a coefficient of .55 should be used.

Step 2: Locate the student's intellectual standard score in the first column of Table 1 (labeled "IQ"), titled Observed Achievement Levels Necessary for IQ-Achievement Discrepancy Using Standard Scores on Tests With Ms = 100 and SDs = 15.

Step 3: Follow that row determined in Step 2 to the column with the correlational value closest to the correlation between the chosen measures of intellectual functioning and achievement. For example, the correlation between the WISC-R and the Written Language and Knowledge Cluster of the Woodcock-Johnson is approximately .68. If a student's score on the WISC-R is 105, the achievement test standard score necessary for a severe discrepancy is .85.

Step 4: Compare the actual achievement standard score with the expected score. For example, if the criterion achievement score in Step 3 was .85, and the student had an actual Woodcock-Johnson standard score of .85 or lower, the difference is indicative of a severe discrepancy.

The following tables have been prepared, under contract, by Dr. Joseph Glutting and Dr. George Bear, Assistant Professors, Department of Educational Studies, University of Delaware.

TABLE 1

APPENDIX B

Observed Achievement Levels Necessary for IQ-Achievement Discrepancy Using Standard Scores on Tests with Ms = 100 and SDs = 15

	Correlations Between Intellectual and Achievement Measures										
	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
I.Q.	Achievement Test Standard Score Necessary for Discrepancy										
150	94	97	100	103	106	110	113	117	121	125	129
149	94	96	100	103	106	109	113	116	120	124	128
148	93	96	99	102	105	109	112	115	119	123	127
147	93	96	99	102	105	108	111	115	118	122	126
146	92	95	98	101	104	107	111	114	118	121	126
145	92	95	98	101	104	107	110	113	117	121	125
144	92	94	97	100	103	106	109	113	116	120	124
143	91	94	97	100	103	106	109	112	115	119	123
142	91	94	96	99	102	105	108	111	115	118	122
141	91	93	96	99	101	104	107	111	114	117	121
140	90	93	95	98	101	104	107	110	113	117	121
139	90	92	95	98	100	103	106	109	112	116	120
138	90	92	95	97	100	103	105	108	112	115	119
137	89	92	94	97	99	102	105	108	111	114	118
136	89	91	94	96	99	101	104	107	110	113	117
135	89	91	93	96	98	101	103	106	109	113	116
134	88	90	93	95	98	100	103	106	109	112	115
133	88	90	92	95	97	100	102	105	108	111	115
132	88	90	92	94	96	99	102	104	107	110	114
131	87	89	91	94	96	98	101	104	106	109	113
130	87	89	91	93	95	98	100	103	106	109	112

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TABLE 1, Continued

Correlations Between Intellectual and Achievement Measures

I.Q.	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
	Achievement Test Standard Score Necessary for Discrepancy										
129	87	88	91	93	95	97	100	102	105	108	111
128	86	88	90	92	94	97	99	101	104	107	110
127	86	88	90	92	94	96	98	101	103	106	109
126	85	87	89	91	93	95	98	100	103	105	109
125	85	87	89	91	93	95	97	99	102	105	108
124	85	86	88	90	92	94	96	99	101	104	107
123	84	86	88	90	92	94	96	98	100	103	106
122	84	86	87	89	91	93	95	97	100	102	105
121	84	85	87	89	90	92	94	97	99	101	104
120	83	85	86	88	90	92	94	96	98	101	104
119	83	84	86	88	89	91	93	95	97	100	103
118	83	84	86	87	89	91	92	94	97	99	102
117	82	84	85	87	88	90	92	94	96	98	101
116	82	83	85	86	88	89	91	93	95	97	100
115	82	83	84	85	87	89	90	92	94	97	99
114	81	82	84	85	87	88	90	92	94	96	98
113	81	82	83	85	86	88	89	91	93	95	98
112	81	82	83	84	85	87	89	90	92	94	97
111	80	81	82	84	85	86	88	90	91	93	96
110	80	81	82	83	84	86	87	89	91	93	95
109	80	80	82	83	84	85	87	88	90	92	94
108	79	80	81	82	83	85	86	87	89	91	93
107	79	80	81	82	83	84	85	87	88	90	92
106	78	79	80	81	82	83	85	86	88	89	92

TABLE 1, Continued

Correlations Between Intellectual and Achievement Measures

I.Q.	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
	Achievement Test Standard Score Necessary for Discrepancy										
105	78	79	80	81	82	83	84	85	87	89	91
104	78	78	79	80	81	82	83	85	86	88	90
103	77	78	79	80	81	82	83	84	85	87	89
102	77	78	78	79	80	81	82	83	85	86	88
101	77	77	78	79	79	80	81	83	84	85	87
100	76	77	77	78	79	80	81	82	83	85	87
99	76	76	77	78	78	79	80	81	82	84	86
98	76	76	77	77	78	79	79	80	82	83	85
97	75	76	76	77	77	78	79	80	81	82	84
96	75	75	76	76	77	77	78	79	80	81	83
95	75	75	75	76	76	77	77	78	79	81	82
94	74	74	75	75	76	76	77	78	79	80	81
93	74	74	74	75	75	76	76	77	78	79	81
92	74	74	74	74	74	75	76	76	77	78	80
91	73	73	73	74	74	74	75	76	76	77	79
90	73	73	73	73	73	74	74	75	76	77	78
89	73	72	73	73	73	73	74	74	75	76	77
88	72	72	72	72	72	73	73	73	74	75	76
87	72	72	72	72	72	72	72	73	73	74	75
86	71	71	71	71	71	71	72	72	73	73	75
85	71	71	71	71	71	71	71	71	72	73	74
84	71	70	70	70	70	70	70	71	71	72	73
83	70	70	70	70	70	70	70	70	70	71	72
82	70	70	69	69	69	69	69	69	70	70	71

TABLE 1, Continued

Correlations Between Intellectual and Achievement Measures

I.Q.	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
	Achievement Test Standard Score Necessary for Discrepancy										
81	70	69	69	69	68	68	68	69	69	69	70
80	69	69	68	68	68	68	68	68	68	69	70
79	69	68	68	68	67	67	67	67	67	68	69
78	69	68	68	67	67	66	66	66	67	67	68
77	68	68	67	67	66	66	66	66	66	66	67
76	68	67	67	66	66	65	65	65	65	65	66
75	68	67	66	66	65	65	64	64	64	65	65
74	67	66	66	65	65	64	64	64	64	64	64
73	67	66	65	65	64	64	63	63	63	63	64
72	67	66	65	64	63	63	63	62	62	62	63
71	66	65	64	64	63	62	62	62	61	61	62
70	66	65	64	63	62	62	61	61	61	61	61

TABLE 2

Correlations Between Wechsler Intelligence Scale for Children-Revised (Full Scale) and Tests of Achievement*

BASIS (Basic Achievement Skills Individual screener)

	Reading	Math
Ages 6 - 16	.53	.39

Key Math**

Grades 1 - 4	.72
Grades 5 - 8	.66

PIAT**

	Math	Rdg. Recog.	Rdg. Comp.	Spell.	G. Info.
Ages 6 - 16	.57	.56	.60	.43	.71

Woodcock-Johnson Psycho-Educational Battery Tests of Achievement

	Reading	Math	Written Lang.	Knowledge
Grades 1 - 4	.67	.59	.68	.73
Grades 5 - 8	.54	.61	.68	.64

Woodcock Reading Mastery Tests**

	Total Reading
Grades 1 - 4	.70
Grades 5 - 8	.61

WRAT-R

	Reading	Spelling	Arithmetic
Ages 6 - 11	.72	.65	.75
Ages 12 - 16	.62	.56	.66

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*Derived from McDermott Multidimensional Assessment of Children.
**Note that these are not the recently revised versions of the instruments. Correlations for the revised versions are not yet available.

Table 2, continued

Correlations Between Stanford-Binet Intelligence Scale:
Fourth Edition Composite and Tests of Achievement

Woodcock-Johnson Psycho-Educational Battery and Tests of Achievement*

	Reading	Math	Written Lang.	Knowledge
Age 5	.59	.58	.57	.84
Ages 7 & 8	.68	.80	.72	.63
Ages 12 & 13	.81	.78	.57	.75

Woodcock Reading Mastery Tests - Revised**

	Basic Skills-Short Scale	Reading Comp.-Full Scale
Grade 1	.58	.65
Grade 2	.60	.67
Grade 3	.62	.69
Grade 4 & 5	.63	.70
Grade 6	.64	.71
Grades 7 & 8	.65	.72
Grades 9 & 10	.66	.73
Grades 11 & 12	.67	.74

WRAT-R*

	Reading	Spelling	Arithmetic
Age 5	.52	.52	.58
Ages 7 & 8	.59	.61	.55
Ages 12 & 13	.63	.48	.74

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*Derived from S-BIV Examiner's Handbook.
**Based on "Estimated" correlations reported in Woodcock Manual.

Table 2, Continued

Correlations Between K-ABC Mental Composite and Tests of Achievement

Comprehensive Test of Basic Skills (CTBS)*

	Reading	Language	Math	Total
Grades 5 - 6	.57	.55	.58	.59

Key Math**

	Total Math
All ages	.67

K-TEA Composite Scores**

	Reading	Math	Spelling	Battery
Ages 6 to 8	.50	.63	.47	.56
Ages 9 to 12-1/2	.64	.67	.30	.67

PIAT**

	Rdg. Rec.	Rdg. Comp.	Math	Spelling	Gen. Info.	Total
Ages 6 - 12-1/2	.82	.77	.76	.63	.66	.89

Stanford Diagnostic Reading Test**

	Phonetics	Total Comprehension
All ages	.53	.49

Woodcock Reading Mastery Tests - Revised***

	Basic Skills Short Scale	Reading Comp. FS
All ages	.65	.60

*From Valencia & Rankin (1988), Psychology in the Schools, 25.
**From K-ABC Manual.
***Based on "Estimated" correlations reported in Woodcock Manual.

Table 2, Continued

Correlations Between Stanford-Binet Intelligence Scale:
Fourth Edition Composite and Tests of Achievement*

WRAT-R

	Reading	Spelling	Arithmetic
Age 5	.52	.52	.58
Ages 7 & 8	.59	.61	.55
Ages 12 & 13	.63	.48	.74

*Derived from Stanford-Binet IV Examiner's Handbook.

Correlations Between Wechsler Preschool and Primary Scales
of Intelligence (WPPSI, Full Scale) and WRAT-R*

Reading	Spelling	Arithmetic
.47	.39	.51

*Derived from McDermott Multidimensional Assessment of Children.